

raise awareness. I certainly am committed, Mr. Chairman, and the gentleman from New York (Mrs. MALONEY), and I hope all our colleagues will do the same. We must work to ensure that every citizen participates in this very important civic exercise, not only to be counted but to be recognized, and to ensure that everyone on April 1, 2000, is counted.

I cannot say enough how much I appreciate the leadership of the gentleman from Florida (Mr. MILLER), and certainly that of the gentlewoman from New York (Mrs. MALONEY). She has given me some ideas, and I am sure she has given my colleagues throughout this body ideas on how we might move forward and ensure all are counted on that very important day.

Mrs. MALONEY of New York. Mr. Speaker, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, one thing we all agree on is that we want to have the most accurate count responsible. This is a constitutional responsibility. Article 1 of our Constitution requires us to do this every 10 years.

Since Thomas Jefferson did the first Census in 1790, we have had some problems with it. We recognize there is a problem of a differential undercount. That is wrong. We want the best count possible.

One way that each of us, all 435 of us, can help make that possible is to participate in our local communities, which we know best how to help promote the Census, how to help get people to believe that the Census is confidential, and to complete those forms.

Now is the time to prepare for the Census time next March. I encourage all Members to get involved, and I encourage my colleagues to support this legislation.

Mr. REYES. Mr. Speaker, I rise in support of this important resolution.

I would like to begin by recognizing the hard work of my colleagues, Chairman DAN MILLER and Congresswoman CAROLYN MALONEY. They have worked tirelessly on this issue, and I applaud their efforts on this extremely important issue.

H. Con. Res. 193 expresses the support of Congress for activities to increase public participation in the decennial census. As we all know, in order to achieve a successful decennial census, the joint efforts of Federal, State, and local government and other interested parties and grassroots organizations must come together as partners.

The Bureau of the Census has implemented a partnership program through which a comprehensive outreach, education, and motivation campaign is being carried out to encourage all segments of the population to participate in the upcoming census. As I have said many times, Texas has a lot at stake in the current debate over the year 2000 Census. The County of El Paso has a lot to lose if the 2000 Census is conducted the way the 1990 Census was conducted.

In 1900, the census used a traditional head count and made about 26 million mistakes. It

missed over 8 million people completely, double-counted over 4 million and put 13 million in the wrong places. And most of the undercount involved children, people of color and the urban and rural poor.

The Census Bureau estimates that in Texas, the net undercount of residents in 1990 was over 486,000 individuals. The net undercount rate in Texas was .028, which represented the second most undercounted state in the nation. They were either out of town, tossed the form with the junk mail, did not trust the government, feared immigration or bill collection officials, lived in a neighborhood the census workers did not feel like checking.

Whatever the reason, too many individuals were missed. Included in this are over 279,000 Caucasians, 83,300 blacks, 247,000 individuals of Hispanic origin, 8,500 Asian and Pacific Islanders and, over 1,875 American Indians. In addition, over 228,300 children were missed in Texas. Over 25,000 individuals were missed in El Paso alone, enough to fill half of the Sun Bowl. We were the 17th most undercounted district in the nation.

The failure of the 1990 Census to accurately count the population in El Paso County seriously shortchanged the Federal funding that cities within my district should have received during the past decade. In effect, cities like El Paso, Anthony and Socorro were required to utilize funds for schools, roads, health facilities, housing, and other important services for people that were not counted by the census.

The number of children missed in the 16th Congressional district would fill 22 schools staffed by 770 teachers. According to the Council of Great City Schools, every child not counted by the census means that some \$650 in federal resources is lost each year by the school that must educate that child. This equals over \$8 million lost in my Congressional district alone!

We are not alone. The 1990 Census did the same thing nationwide. Two million of those missed in 1990 were children under the age of 18—half the net undercount although they were only about a quarter of the U.S. population in 1990. The 1990 Census affected minorities the most: 4.4 percent of blacks were missed, 5 percent of Hispanics, 12.2 percent of at least one tribe of Native Americans. This differential racial undercount must be addressed by the 2000 Census.

This resolution is sending the right message at the right time—that public participation is necessary to ensure that everyone is counted, especially children, people of color and the urban and rural poor. Anything less is unacceptable.

Ms. JACKSON-LEE of Texas. Mr. Speaker, to cope with the year 2000 census, the Census Bureau has implemented a partnership program through which a comprehensive outreach, education and motivation campaign is being carried out to encourage all segments of the population to participate in the upcoming count.

This resolution expresses the support of Congress for activities to increase public participation in the decennial census; recognizes the importance of achieving a successful decennial census; encourages state and local governments, community leaders, and all other parties involved in this joint undertaking to continue to work to ensure a successful census; and reaffirms the spirit of cooperation that exists between Congress and the Census

Bureau with respect to achieving a successful census.

Hundreds of thousands of census takers and support personnel will be needed to account for the anticipated 118 million housing units and 275 million people across the United States. But it isn't its size that makes Census 2000 important. It is all the things that we will learn about ourselves that will help America succeed in the next millennium. The census is as important to our nation as highways and telephone lines. Federal dollars supporting schools, employment services, housing assistance, highway construction, hospital services programs for the elderly and more are distributed based on census figures.

How do we know who we are as a country? We only take one big portrait of this country—that is the decennial Census. And if you're not in it, you will be unrecognized. More than \$200 billion in federal funds is distributed to the states based on census figures, as well as political apportionment in the House of Representatives.

Census 2000 will help decision-makers understand which neighborhoods need schools and which ones need greater services for the elderly. But they won't be able to tell what your community needs if you and your neighbors don't fill out your census forms and mail them back.

The message is a simple one, Mr. Speaker; "This is your future. Don't leave it blank." I encourage my colleagues and all Americans to help the Census Bureau in making this snapshot of America's population clearer. If we are not counted, then we are invisible and our communities will lose its fair share of federal funding and political apportionment—we can all help our community and our nation by filling out the census questionnaire, returning it and being counted.

Mr. MILLER of Florida. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Florida (Mr. MILLER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 193.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

#### CONFERENCE REPORT ON S. 900, GRAMM-LEACH-BLILEY ACT

Mr. LEACH submitted the following conference report and statement on the Senate bill (S. 900) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes:

#### CONFERENCE REPORT (H. REPT. 106-434)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 900), to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other

purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

#### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Gramm-Leach-Bliley Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

#### **TITLE I—FACILITATING AFFILIATION AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES**

##### **Subtitle A—Affiliations**

Sec. 101. Glass-Steagall Act repeals.

Sec. 102. Activity restrictions applicable to bank holding companies that are not financial holding companies.

Sec. 103. Financial activities.

Sec. 104. Operation of State law.

Sec. 105. Mutual bank holding companies authorized.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Cross marketing restriction; limited purpose bank relief; divestiture.

Sec. 108. Use of subordinated debt to protect financial system and deposit funds from “too big to fail” institutions.

Sec. 109. Study of financial modernization’s effect on the accessibility of small business and farm loans.

##### **Subtitle B—Streamlining Supervision of Bank Holding Companies**

Sec. 111. Streamlining bank holding company supervision.

Sec. 112. Authority of State insurance regulator and Securities and Exchange Commission.

Sec. 113. Role of the Board of Governors of the Federal Reserve System.

Sec. 114. Prudential safeguards.

Sec. 115. Examination of investment companies.

Sec. 116. Elimination of application requirement for financial holding companies.

Sec. 117. Preserving the integrity of FDIC resources.

Sec. 118. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.

Sec. 119. Technical amendment.

##### **Subtitle C—Subsidiaries of National Banks**

Sec. 121. Subsidiaries of national banks.

Sec. 122. Consideration of merchant banking activities by financial subsidiaries.

##### **Subtitle D—Preservation of FTC Authority**

Sec. 131. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.

Sec. 132. Interagency data sharing.

Sec. 133. Clarification of status of subsidiaries and affiliates.

##### **Subtitle E—National Treatment**

Sec. 141. Foreign banks that are financial holding companies.

Sec. 142. Representative offices.

##### **Subtitle F—Direct Activities of Banks**

Sec. 151. Authority of national banks to underwrite certain municipal bonds.

##### **Subtitle G—Effective Date**

Sec. 161. Effective date.

#### **TITLE II—FUNCTIONAL REGULATION**

##### **Subtitle A—Brokers and Dealers**

Sec. 201. Definition of broker.

Sec. 202. Definition of dealer.

Sec. 203. Registration for sales of private securities offerings.

Sec. 204. Information sharing.

Sec. 205. Treatment of new hybrid products.

Sec. 206. Definition of identified banking product.

Sec. 207. Additional definitions.

Sec. 208. Government securities defined.

Sec. 209. Effective date.

Sec. 210. Rule of construction.

##### **Subtitle B—Bank Investment Company Activities**

Sec. 211. Custody of investment company assets by affiliated bank.

Sec. 212. Lending to an affiliated investment company.

Sec. 213. Independent directors.

Sec. 214. Additional SEC disclosure authority.

Sec. 215. Definition of broker under the Investment Company Act of 1940.

Sec. 216. Definition of dealer under the Investment Company Act of 1940.

Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.

Sec. 218. Definition of broker under the Investment Advisers Act of 1940.

Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.

Sec. 220. Interagency consultation.

Sec. 221. Treatment of bank common trust funds.

Sec. 222. Statutory disqualification for bank wrongdoing.

Sec. 223. Conforming change in definition.

Sec. 224. Conforming amendment.

Sec. 225. Effective date.

##### **Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies**

Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.

##### **Subtitle D—Banks and Bank Holding Companies**

Sec. 241. Consultation.

#### **TITLE III—INSURANCE**

##### **Subtitle A—State Regulation of Insurance**

Sec. 301. Functional regulation of insurance.

Sec. 302. Insurance underwriting in national banks.

Sec. 303. Title insurance activities of national banks and their affiliates.

Sec. 304. Expedited and equalized dispute resolution for Federal regulators.

Sec. 305. Insurance customer protections.

Sec. 306. Certain State affiliation laws preempted for insurance companies and affiliates.

Sec. 307. Interagency consultation.

Sec. 308. Definition of State.

##### **Subtitle B—Redomestication of Mutual Insurers**

Sec. 311. General application.

Sec. 312. Redomestication of mutual insurers.

Sec. 313. Effect on State laws restricting redomestication.

Sec. 314. Other provisions.

Sec. 315. Definitions.

Sec. 316. Effective date.

##### **Subtitle C—National Association of Registered Agents and Brokers**

Sec. 321. State flexibility in multistate licensing reforms.

Sec. 322. National Association of Registered Agents and Brokers.

Sec. 323. Purpose.

Sec. 324. Relationship to the Federal Government.

Sec. 325. Membership.

Sec. 326. Board of directors.

Sec. 327. Officers.

Sec. 328. Bylaws, rules, and disciplinary action.

Sec. 329. Assessments.

Sec. 330. Functions of the NAIC.

Sec. 331. Liability of the association and the directors, officers, and employees of the association.

Sec. 332. Elimination of NAIC oversight.

Sec. 333. Relationship to State law.

Sec. 334. Coordination with other regulators.

Sec. 335. Judicial review.

Sec. 336. Definitions.

##### **Subtitle D—Rental Car Agency Insurance Activities**

Sec. 341. Standard of regulation for motor vehicle rentals.

#### **TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES**

Sec. 401. Prevention of creation of new S&L holding companies with commercial affiliates.

#### **TITLE V—PRIVACY**

##### **Subtitle A—Disclosure of Nonpublic Personal Information**

Sec. 501. Protection of nonpublic personal information.

Sec. 502. Obligations with respect to disclosures of personal information.

Sec. 503. Disclosure of institution privacy policy.

Sec. 504. Rulemaking.

Sec. 505. Enforcement.

Sec. 506. Protection of Fair Credit Reporting Act.

Sec. 507. Relation to State laws.

Sec. 508. Study of information sharing among financial affiliates.

Sec. 509. Definitions.

Sec. 510. Effective date.

##### **Subtitle B—Fraudulent Access to Financial Information**

Sec. 521. Privacy protection for customer information of financial institutions.

Sec. 522. Administrative enforcement.

Sec. 523. Criminal penalty.

Sec. 524. Relation to State laws.

Sec. 525. Agency guidance.

Sec. 526. Reports.

Sec. 527. Definitions.

#### **TITLE VI—FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION**

Sec. 601. Short title.

Sec. 602. Definitions.

Sec. 603. Savings association membership.

Sec. 604. Advances to members; collateral.

Sec. 605. Eligibility criteria.

Sec. 606. Management of banks.

Sec. 607. Resolution Funding Corporation.

Sec. 608. Capital structure of Federal home loan banks.

#### **TITLE VII—OTHER PROVISIONS**

##### **Subtitle A—ATM Fee Reform**

Sec. 701. Short title.

Sec. 702. Electronic fund transfer fee disclosures at any host ATM.

Sec. 703. Disclosure of possible fees to consumers when ATM card is issued.

Sec. 704. Feasibility study.

Sec. 705. No liability if posted notices are damaged.

##### **Subtitle B—Community Reinvestment**

Sec. 711. CRA sunshine requirements.

Sec. 712. Small bank regulatory relief.

Sec. 713. Federal Reserve Board study of CRA lending.

Sec. 714. Preserving the Community Reinvestment Act of 1977.

Sec. 715. Responsiveness to community needs for financial services.

##### **Subtitle C—Other Regulatory Improvements**

Sec. 721. Expanded small bank access to S corporation treatment.

Sec. 722. “Plain language” requirement for Federal banking agency rules.

Sec. 723. Retention of “Federal” in name of converted Federal savings association.

- Sec. 724. Control of bankers' banks.  
 Sec. 725. Provision of technical assistance to microenterprises.  
 Sec. 726. Federal Reserve audits.  
 Sec. 727. Authorization to release reports.  
 Sec. 728. General Accounting Office study of conflicts of interest.  
 Sec. 729. Study and report on adapting existing legislative requirements to online banking and lending.  
 Sec. 730. Clarification of source of strength doctrine.  
 Sec. 731. Interest rates and other charges at interstate branches.  
 Sec. 732. Interstate branches and agencies of foreign banks.  
 Sec. 733. Fair treatment of women by financial advisers.  
 Sec. 734. Membership of loan guarantee boards.  
 Sec. 735. Repeal of stock loan limit in Federal Reserve Act.  
 Sec. 736. Elimination of SAIF and DIF special reserves.  
 Sec. 737. Bank officers and directors as officers and directors of public utilities.  
 Sec. 738. Approval for purchases of securities.  
 Sec. 739. Optional conversion of Federal savings associations.  
 Sec. 740. Grand jury proceedings.

# **TITLE I—FACILITATING AFFILIATION AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES**

## **Subtitle A—Affiliations**

### **SEC. 101. GLASS-STEAGALL ACT REPEALS.**

(a) SECTION 20 REPEALED.—Section 20 of the Banking Act of 1933 (12 U.S.C. 377) (commonly referred to as the "Glass-Steagall Act") is repealed.

(b) SECTION 32 REPEALED.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is repealed.

### **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES THAT ARE NOT FINANCIAL HOLDING COMPANIES.**

(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:

"(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);".

### **(b) CONFORMING CHANGES TO OTHER STATUTES.—**

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking ", to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,".

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by inserting before the period at the end the following: "as of the day before the date of the enactment of the Gramm-Leach-Bliley Act".

### **SEC. 103. FINANCIAL ACTIVITIES.**

(a) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsections:

"(k) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)—

"(A) to be financial in nature or incidental to such financial activity; or

"(B) is complementary to a financial activity and does not pose a substantial risk to the safe-

ty or soundness of depository institutions or the financial system generally.

"(2) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

"(A) PROPOSALS RAISED BEFORE THE BOARD.—

"(i) CONSULTATION.—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection for a determination of whether an activity is financial in nature or incidental to a financial activity.

"(ii) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in clause (i) (or such longer period as the Board determines to be appropriate under the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

"(B) PROPOSALS RAISED BY THE TREASURY.—

"(i) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

"(ii) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under clause (i) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, if the Board determines not to seek public comment on the proposal, the reasons for that determination.

"(3) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account—

"(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

"(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

"(C) changes or reasonably expected changes in the technology for delivering financial services; and

"(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to—

"(i) compete effectively with any company seeking to provide financial services in the United States;

"(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

"(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

"(4) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—For purposes of this subsection, the following activities shall be considered to be financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

"(C) Providing financial, investment, or economic advisory services, including advising an

investment company (as defined in section 3 of the Investment Company Act of 1940).

"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

"(E) Underwriting, dealing in, or making a market in securities.

"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

"(G) Engaging, in the United States, in any activity that—

"(i) a bank holding company may engage in outside of the United States; and

"(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

"(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by—

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

"(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

"(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property

and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

“(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

“(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

“(5) ACTIONS REQUIRED.—

“(A) IN GENERAL.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

“(B) ACTIVITIES.—The activities described in this subparagraph are as follows:

“(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

“(ii) Providing any device or other instrumentality for transferring money or other financial assets.

“(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

“(6) REQUIRED NOTIFICATION.—

“(A) IN GENERAL.—A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be.

“(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in subsection (j) with regard to the acquisition of a savings association, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

“(7) MERCHANT BANKING ACTIVITIES.—

“(A) JOINT REGULATIONS.—The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this Act and the Gramm-Leach-Bliley Act and to protect depository institutions.

“(B) SUNSET OF RESTRICTIONS ON MERCHANT BANKING ACTIVITIES OF FINANCIAL SUBSIDIARIES.—The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in section 5136A of the Revised Statutes of the United States) of a bank, if the Board and the Secretary of the Treasury jointly authorize financial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.

“(I) CONDITIONS FOR ENGAGING IN EXPANDED FINANCIAL ACTIVITIES.—

“(1) IN GENERAL.—Notwithstanding subsection (k), (n), or (o), a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), (n), or (o), other than activities permissible for any bank holding company under subsection (c)(8), unless—

“(A) all of the depository institution subsidiaries of the bank holding company are well capitalized;

“(B) all of the depository institution subsidiaries of the bank holding company are well managed; and

“(C) the bank holding company has filed with the Board—

“(i) a declaration that the company elects to be a financial holding company to engage in activities or acquire and retain shares of a company that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act; and

“(ii) a certification that the company meets the requirements of subparagraphs (A) and (B).

“(2) CRA REQUIREMENT.—Notwithstanding subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act, the appropriate Federal banking agency shall prohibit a financial holding company or any insured depository institution from—

“(A) commencing any new activity under subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act; or

“(B) directly or indirectly acquiring control of a company engaged in any activity under subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act (other than an investment made pursuant to subparagraph (H) or (I) of subsection (k)(4), or section 122 of the Gramm-Leach-Bliley Act, or under section 46(a) of the Federal Deposit Insurance Act by reason of such section 122, by an affiliate already engaged in activities under any such provision); if any insured depository institution subsidiary of such financial holding company, or the insured depository institution or any of its insured depository institution affiliates, has received in its most recent examination under the Community Reinvestment Act of 1977, a rating of less than ‘satisfactory record of meeting community credit needs’.

“(3) FOREIGN BANKS.—For purposes of paragraph (1), the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.

“(m) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET CERTAIN REQUIREMENTS.—

“(1) IN GENERAL.—If the Board finds that—

“(A) a financial holding company is engaged, directly or indirectly, in any activity under subsection (k), (n), or (o), other than activities that are permissible for a bank holding company under subsection (c)(8); and

“(B) such financial holding company is not in compliance with the requirements of subsection (l)(1);

the Board shall give notice to the financial holding company to that effect, describing the conditions giving rise to the notice.

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after the date of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the financial holding company shall execute an agreement with the Board to comply with the requirements applicable to a financial holding company under subsection (l)(1).

“(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of that financial holding company or any affiliate of that company as the Board determines to be appropriate under the circumstances and consistent with the purposes of this Act.

“(4) FAILURE TO CORRECT.—If the conditions described in a notice to a financial holding com-

pany under paragraph (1) are not corrected within 180 days after the date of receipt by the financial holding company of a notice under paragraph (1), the Board may require such financial holding company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the discretion of the Board, either—

“(A) to divest control of any subsidiary depository institution; or

“(B) at the election of the financial holding company instead to cease to engage in any activity conducted by such financial holding company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8).

“(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies and authorities.

“(n) AUTHORITY TO RETAIN LIMITED NON-FINANCIAL ACTIVITIES AND AFFILIATIONS.—

“(1) IN GENERAL.—Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Gramm-Leach-Bliley Act may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

“(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1999;

“(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

“(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1999, and other activities permissible under this Act.

“(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under subsection (k) represent at least 85 percent of the consolidated annual gross revenues of the company.

“(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company that is engaged in any activity that the Board has not determined to be financial in nature or incidental to a financial activity under subsection (k), except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 and the shares of which are under common control with an insurance company since January 1, 1998, unless such company is acquired by, or otherwise becomes an affiliate of, a bank holding company that, at the time such acquisition or affiliation is consummated, is 1 of the 5 largest domestic bank holding companies (as determined on the basis of the consolidated total assets of such companies).

“(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all

such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

“(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—

“(A) IN GENERAL.—A depository institution controlled by a financial holding company shall not—

“(i) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (k)(4); or

“(ii) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in clause (i).

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to subsection (k)(4)(I) for the marketing of products or services through statement inserts or Internet websites if—

“(i) such arrangement does not violate section 106 of the Bank Holding Company Act Amendments of 1970; and

“(ii) the Board determines that the arrangement is in the public interest, does not undermine the separation of banking and commerce, and is consistent with the safety and soundness of depository institutions.

“(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection.

“(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

“(8) REGULATION OF CERTAIN FINANCIAL HOLDING COMPANIES.—Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of enactment of the Gramm-Leach-Bliley Act, may continue to engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of September 30, 1997, if—

“(1) the holding company, or any subsidiary of the holding company, lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States;

“(2) the attributed aggregate consolidated assets of the company held by the holding company pursuant to this subsection, and not otherwise permitted to be held by a financial holding company, are equal to not more than 5 percent of the total consolidated assets of the bank holding company, except that the Board may increase that percentage by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act; and

“(3) the holding company does not permit—

“(A) any company, the shares of which it owns or controls pursuant to this subsection, to offer or market any product or service of an affiliated depository institution; or

“(B) any affiliated depository institution to offer or market any product or service of any company, the shares of which are owned or controlled by such holding company pursuant to this subsection.”

“(b) COMMUNITY REINVESTMENT REQUIREMENT.—Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:

“(c) FINANCIAL HOLDING COMPANY REQUIREMENT.—

“(1) IN GENERAL.—An election by a bank holding company to become a financial holding company under section 4 of the Bank Holding Company Act of 1956 shall not be effective if—

“(A) the Board finds that, as of the date the declaration of such election and the certification is filed by such holding company under section 4(l)(1)(C) of the Bank Holding Company Act of 1956, not all of the subsidiary insured depository institutions of the bank holding company had achieved a rating of ‘satisfactory record of meeting community credit needs’, or better, at the most recent examination of each such institution; and

“(B) the Board notifies the company of such finding before the end of the 30-day period beginning on such date.

“(2) LIMITED EXCLUSIONS FOR NEWLY ACQUIRED INSURED DEPOSITORY INSTITUTIONS.—Any insured depository institution acquired by a bank holding company during the 12-month period preceding the date of the submission to the Board of the declaration and certification under section 4(l)(1)(C) of the Bank Holding Company Act of 1956 may be excluded for purposes of paragraph (1) during the 12-month period beginning on the date of such acquisition if—

“(A) the bank holding company has submitted an affirmative plan to the appropriate Federal financial supervisory agency to take such action as may be necessary in order for such institution to achieve a rating of ‘satisfactory record of meeting community credit needs’, or better, at the next examination of the institution; and

“(B) the plan has been accepted by such agency.

“(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) BANK HOLDING COMPANY; FINANCIAL HOLDING COMPANY.—The terms ‘bank holding company’ and ‘financial holding company’ have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956.

“(B) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(C) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’ has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.”

“(c) TECHNICAL AND CONFORMING AMENDMENTS.—

“(1) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

“(A) in subsection (n), by inserting “‘depository institution,’” after “the terms”; and

“(B) by adding at the end the following new subsections:

“(p) FINANCIAL HOLDING COMPANY.—For purposes of this Act, the term ‘financial holding company’ means a bank holding company that meets the requirements of section 4(l)(1).

“(q) INSURANCE COMPANY.—For purposes of sections 4 and 5, the term ‘insurance company’ includes any person engaged in the business of insurance to the extent of such activities.”

“(2) NOTICE PROCEDURES.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)) is amended—

“(A) in each of subparagraphs (A) and (E) of paragraph (1), by inserting “or in any complementary activity under subsection (k)(1)(B)” after “subsection (c)(8) or (a)(2)”; and

“(B) in paragraph (3)—

“(i) by inserting “or a company engaged in any complementary activity under subsection (k)(1)(B)” after “insured depository institution”;

“(d) REPORT.—

“(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (k)(1) or (n) of section 4 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

“(2) OTHER CONTENTS.—The report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

“(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies that are incidental to activities that are financial in nature or complementary to such financial activities.

“(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

“(C) An analysis and discussion of the effect of mergers and acquisitions under section 4(k) of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

#### SEC. 104. OPERATION OF STATE LAW.

“(a) STATE REGULATION OF THE BUSINESS OF INSURANCE.—The Act entitled “An Act to express the intent of Congress with reference to the regulation of the business of insurance” and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the “McCarran-Ferguson Act”) remains the law of the United States.

“(b) MANDATORY INSURANCE LICENSING REQUIREMENTS.—No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

“(c) AFFILIATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

“(2) INSURANCE.—With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

“(A) any State from—

“(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

“(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State; during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate

thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or cross-marketing activity.

(B) CERTAIN STATE LAWS PRESERVED.—Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by an depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is

a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 304(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act");

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);



(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e).

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) NONDISCRIMINATION.—Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) LIMITATION.—Subsections (c) and (d) shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 18(c) of the Securities

Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AFFILIATE.—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(2) ANTITRUST LAWS.—The term “antitrust laws” has the meaning given the term in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act (to the extent that such section 5 relates to unfair methods of competition).

(3) DEPOSITORY INSTITUTION.—The term “depository institution”—

(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) INSURER.—The term “insurer” means any person engaged in the business of insurance.

(5) STATE.—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

#### SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

“(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.”.

#### SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.

Section 109(e)(4) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4)) is amended by inserting “and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)” before the period.

#### SEC. 107. CROSS MARKETING RESTRICTION; LIMITED PURPOSE BANK RELIEF; DIVESTITURE.

(a) CROSS MARKETING RESTRICTION.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by striking paragraph (3).

(b) DAYLIGHT OVERDRAFTS.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by inserting after paragraph (2) the following new paragraph:

“(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(C), an overdraft is described in this paragraph if—

“(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

“(B) such overdraft—

“(i) is permitted or incurred on behalf of an affiliate that is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

“(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations that are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

“(C) such overdraft—

“(i) is permitted or incurred by, or on behalf of, an affiliate in connection with an activity that is financial in nature or incidental to a financial activity; and

“(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a bank that is not a member of the Federal Reserve System.”.

(c) INDUSTRIAL LOAN COMPANIES; AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting “, or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1)” before the period at the end.

(d) ACTIVITIES LIMITATIONS.—Section 4(f)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(2)) is amended—

(1) by striking “Paragraph (1) shall cease to apply to any company described in such paragraph if—” and inserting “Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—”;

(2) in subparagraph (A)—

(A) in clause (ii)(IX), by striking “and” at the end;

(B) in clause (ii)(X), by inserting “and” after the semicolon;

(C) in clause (ii), by inserting after subclause (X) the following new subclause:

“(XI) assets that are derived from, or incidental to, activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage;”;

(D) by striking “or” at the end; and

(3) by striking subparagraph (B) and inserting the following:

“(B) any bank subsidiary of such company—

“(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

“(ii) engages in the business of making commercial loans (except that, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

“(C) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in the account of the bank at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).”.

(e) DIVESTITURE REQUIREMENT.—Section 4(f)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(4)) is amended to read as follows:

“(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

“(A) either—

“(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

“(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

“(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.”.

(f) FOREIGN BANK SUBSIDIARIES OF LIMITED PURPOSE CREDIT CARD BANKS.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by adding at the end the following new paragraph:

“(14) FOREIGN BANK SUBSIDIARIES OF LIMITED PURPOSE CREDIT CARD BANKS.—

“(A) IN GENERAL.—An institution described in section 2(c)(2)(F) may control a foreign bank if—

“(i) the investment of the institution in the foreign bank meets the requirements of section 25 or 25A of the Federal Reserve Act and the foreign bank qualifies under such sections;

“(ii) the foreign bank does not offer any products or services in the United States; and

“(iii) the activities of the foreign bank are permissible under otherwise applicable law.

“(B) OTHER LIMITATIONS INAPPLICABLE.—The limitations contained in any clause of section 2(c)(2)(F) shall not apply to a foreign bank described in subparagraph (A) that is controlled by an institution described in such section.”.

#### SEC. 108. USE OF SUBORDINATED DEBT TO PROTECT FINANCIAL SYSTEM AND DEPOSIT FUNDS FROM “TOO BIG TO FAIL” INSTITUTIONS.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall conduct a study of—

(1) the feasibility and appropriateness of establishing a requirement that, with respect to large insured depository institutions and depository institution holding companies the failure of which could have serious adverse effects on economic conditions or financial stability, such institutions and holding companies maintain some portion of their capital in the form of subordinated debt in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and reduce the risk to economic conditions, financial stability, and any deposit insurance fund;

(2) if such requirement is feasible and appropriate, the appropriate amount or percentage of capital that should be subordinated debt consistent with such purposes; and

(3) the manner in which any such requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a report to the Congress containing the findings and conclusions of the Board and the Secretary in connection with the study required under subsection (a), together with such legislative and administrative proposals as the Board and the Secretary may determine to be appropriate.

(c) DEFINITIONS.—For purposes of subsection (a), the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term “bank holding company” has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

(2) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(3) SUBORDINATED DEBT.—The term “subordinated debt” means unsecured debt that—

(A) has an original weighted average maturity of not less than 5 years;

(B) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits;

(C) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(D) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.

#### SEC. 109. STUDY OF FINANCIAL MODERNIZATION'S EFFECT ON THE ACCESSIBILITY OF SMALL BUSINESS AND FARM LOANS.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), shall conduct a study of the extent to which credit is being provided to and for small businesses and farms, as a result of this Act and the amendments made by this Act.

(b) REPORT.—Before the end of the 5-year period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Federal banking agencies, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action.

#### Subtitle B—Streamlining Supervision of Bank Holding Companies

#### SEC. 111. STREAMLINING BANK HOLDING COMPANY SUPERVISION.

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

“(c) REPORTS AND EXAMINATIONS.—

“(1) REPORTS.—

“(A) IN GENERAL.—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

“(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

“(ii) compliance by the company or subsidiary with applicable provisions of this Act or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary.

“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—For purposes of compliance with this paragraph, the Board shall, to the fullest extent possible, accept—

“(I) reports that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

“(II) information that is otherwise required to be reported publicly; and

“(III) externally audited financial statements.

“(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

“(iii) REPORTS FILED WITH OTHER AGENCIES.—

“(I) IN GENERAL.—In the event that the Board requires a report under this subsection from a functionally regulated subsidiary of a bank holding company of a kind that is not required by another Federal or State regulatory authority or an appropriate self-regulatory organization, the Board shall first request that the appropriate regulatory authority or self-regulatory organization obtain such report.

“(II) AVAILABILITY FROM OTHER SUBSIDIARY.—If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its depository institution subsidiaries or compliance with this Act or any other Federal law that the Board has specific jurisdiction to

enforce against such company or subsidiary or the systems described in paragraph (2)(A)(ii)(II), the Board may require such functionally regulated subsidiary to provide such a report to the Board.

“(2) EXAMINATIONS.—

“(A) EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (B), the Board may make examinations of each bank holding company and each subsidiary of such holding company in order—

“(i) to inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

“(ii) to inform the Board of—

“(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any depository institution subsidiary of such holding company; and

“(II) the systems for monitoring and controlling such risks; and

“(iii) to monitor compliance with the provisions of this Act or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary and those governing transactions and relationships between any depository institution subsidiary and its affiliates.

“(B) FUNCTIONALLY REGULATED SUBSIDIARIES.—Notwithstanding subparagraph (A), the Board may make examinations of a functionally regulated subsidiary of a bank holding company only if—

“(i) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution;

“(ii) the Board reasonably determines, after reviewing relevant reports, that examination of the subsidiary is necessary to adequately inform the Board of the systems described in subparagraph (A)(ii)(II); or

“(iii) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or any other Federal law that the Board has specific jurisdiction to enforce against such subsidiary, including provisions relating to transactions with an affiliated depository institution, and the Board cannot make such determination through examination of the affiliated depository institution or the bank holding company.

“(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

“(i) the bank holding company; and

“(ii) any subsidiary of the bank holding company that could have a materially adverse effect on the safety and soundness of any depository institution subsidiary of the holding company due to—

“(I) the size, condition, or activities of the subsidiary; or

“(II) the nature or size of transactions between the subsidiary and any depository institution that is also a subsidiary of the bank holding company.

“(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, for the purposes of this paragraph, use the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

“(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, forego an examination by the Board under this paragraph and instead review the reports of examination made of—

“(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

“(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;



“(iii) any licensed insurance company by or on behalf of any State regulatory authority responsible for the supervision of insurance companies; and

“(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

“(3) CAPITAL.—

“(A) IN GENERAL.—The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that—

“(i) is not a depository institution; and

“(ii) is—

“(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

“(II) properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State; or

“(III) is licensed as an insurance agent with the appropriate State insurance authority.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

“(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

“(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

“(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing bank holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

“(i) a bank holding company; or

“(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

“(4) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—

“(A) SECURITIES ACTIVITIES.—Securities activities conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 104 of the Gramm-Leach-Bliley Act, to the same extent as if they were conducted in a non-depository institution subsidiary of a bank holding company.

“(B) INSURANCE ACTIVITIES.—Subject to section 104 of the Gramm-Leach-Bliley Act, insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

“(5) DEFINITION.—For purposes of this subsection, the term ‘functionally regulated subsidiary’ means any company—

“(A) that is not a bank holding company or a depository institution; and

“(B) that is—

“(i) a broker or dealer that is registered under the Securities Exchange Act of 1934;

“(ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

“(iii) an investment company that is registered under the Investment Company Act of 1940;

“(iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or

“(v) an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.”

**SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.**

(a) BANK HOLDING COMPANIES.—Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

“(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

“(A) such funds or assets are to be provided by—

“(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

“(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

“(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

“(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

“(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

“(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

“(5) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department.”

(b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

**“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

“(1) section 5(c) of the Bank Holding Company Act of 1956 that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators;

“(2) section 5(g) of the Bank Holding Company Act of 1956 that limit the authority of the Board to require a functionally regulated subsidiary of a holding company to provide capital or other funds or assets to a depository institution subsidiary of the holding company and to take certain actions including requiring divestiture of the depository institution; and

“(3) section 10A of the Bank Holding Company Act of 1956 that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to holding companies and their functionally regulated subsidiaries;

shall also limit whatever authority that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions.

“(b) CERTAIN EXEMPTION AUTHORIZED.—No provision of this section shall be construed as preventing the Corporation, if the Corporation finds it necessary to determine the condition of a depository institution for insurance purposes, from examining an affiliate of any depository institution, pursuant to section 10(b)(4), as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

“(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ‘functionally regulated subsidiary’ has the meaning given the term in section 5(c)(5) of the Bank Holding Company Act of 1956.

“(2) FUNCTIONALLY REGULATED AFFILIATE.—The term ‘functionally regulated affiliate’ means, with respect to any depository institution, any affiliate of such depository institution that is—

“(A) not a depository institution holding company; and

“(B) a company described in any clause of section 5(c)(5)(B) of the Bank Holding Company Act of 1956.”

**SEC. 113. ROLE OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 10 the following new section:

**“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

“(a) **LIMITATION ON DIRECT ACTION.**—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a functionally regulated subsidiary of a bank holding company unless—

“(1) the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

“(A) the financial safety, soundness, or stability of an affiliated depository institution; or

“(B) the domestic or international payment system; and

“(2) the Board finds that it is not reasonably possible to protect effectively against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

“(b) **LIMITATION ON INDIRECT ACTION.**—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a bank holding company that requires the bank holding company to require a functionally regulated subsidiary of the holding company to engage, or to refrain from engaging, in any conduct or activities unless the Board could take such action directly against or with respect to the functionally regulated subsidiary in accordance with subsection (a).

“(c) **ACTIONS SPECIFICALLY AUTHORIZED.**—Notwithstanding subsection (a) or (b), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a functionally regulated subsidiary of a bank holding company with any Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

“(d) **FUNCTIONALLY REGULATED SUBSIDIARY DEFINED.**—For purposes of this section, the term ‘functionally regulated subsidiary’ has the meaning given the term in section 5(c)(5).”.

**SEC. 114. PRUDENTIAL SAFEGUARDS.**

(a) **COMPTROLLER OF THE CURRENCY.**—

(1) **IN GENERAL.**—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) **REVIEW.**—The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) **BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**—

(1) **IN GENERAL.**—The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.

(2) **FINDING.**—The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) **REVIEW.**—The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

(B) modify or eliminate any such restriction or requirement the Board finds is no longer required for such purposes.

(4) **FOREIGN BANKS.**—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(c) **FEDERAL DEPOSIT INSURANCE CORPORATION.**—

(1) **IN GENERAL.**—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) **REVIEW.**—The Federal Deposit Insurance Corporation shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Corporation finds is no longer required for such purposes.

**SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

(a) **EXCLUSIVE COMMISSION AUTHORITY.**—Except as provided in subsection (c), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(b) **EXAMINATION RESULTS AND OTHER INFORMATION.**—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) **CERTAIN EXAMINATIONS AUTHORIZED.**—Nothing in this section shall prevent the Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the insured depository institution and the affiliate, and the effect of such relationship on the insured depository institution.

(d) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **BANK HOLDING COMPANY.**—The term “bank holding company” has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

(2) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

(3) **CORPORATION.**—The term “Corporation” means the Federal Deposit Insurance Corporation.

(4) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” has the meaning given the term in section 3(z) of the Federal Deposit Insurance Act.

(5) **INSURED DEPOSITORY INSTITUTION.**—The term “insured depository institution” has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(6) **REGISTERED INVESTMENT COMPANY.**—The term “registered investment company” means an investment company that is registered with the Commission under the Investment Company Act of 1940.

(7) **SAVINGS AND LOAN HOLDING COMPANY.**—The term “savings and loan holding company” has the meaning given the term in section 10(a)(1)(D) of the Home Owners’ Loan Act.

**SEC. 116. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.**

(a) **PREVENTION OF DUPLICATIVE FILINGS.**—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding at the end the following new sentence: “A declaration filed in accordance with section 4(l)(1)(C) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.”.

(b) **DIVESTITURE PROCEDURES.**—Section 5(e)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(1)) is amended—

(1) by striking “Financial Institutions Supervisory Act of 1966, order” and inserting “Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

“(A) order”; and

(2) by striking “shareholders of the bank holding company. Such distribution” and inserting “shareholders of the bank holding company; or

“(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company. The distribution referred to in subparagraph (A)”.’

#### **SEC. 117. PRESERVING THE INTEGRITY OF FDIC RESOURCES.**

Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to benefit any shareholder of” and inserting “to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of”.

#### **SEC. 118. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.**

Section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

“(f) [Repealed].”.

#### **SEC. 119. TECHNICAL AMENDMENT.**

Section 2(o)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by striking “section 38(b)” and inserting “section 38”.

#### **Subtitle C—Subsidiaries of National Banks**

#### **SEC. 121. SUBSIDIARIES OF NATIONAL BANKS.**

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136B; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

#### **“SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.**

“(a) AUTHORIZATION TO CONDUCT IN SUBSIDIARIES CERTAIN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

“(1) IN GENERAL.—Subject to paragraph (2), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary.

“(2) CONDITIONS AND REQUIREMENTS.—A national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, only if—

“(A) the financial subsidiary engages only in—

“(i) activities that are financial in nature or incidental to a financial activity pursuant to subsection (b); and

“(ii) activities that are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by a national bank);

“(B) the activities engaged in by the financial subsidiary as a principal do not include—

“(i) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under section 302 or 303(c) of the Gramm-Leach-Bliley Act) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986;

“(ii) real estate development or real estate investment activities, unless otherwise expressly authorized by law; or

“(iii) any activity permitted in subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956, except activities described in section 4(k)(4)(H) that may be permitted in accordance with section 122 of the Gramm-Leach-Bliley Act;

“(C) the national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

“(D) the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of—

“(i) 45 percent of the consolidated total assets of the parent bank; or

“(ii) \$50,000,000,000;

“(E) except as provided in paragraph (4), the national bank meets any applicable rating or other requirement set forth in paragraph (3); and

“(F) the national bank has received the approval of the Comptroller of the Currency for the financial subsidiary to engage in such activities, which approval shall be based solely upon the factors set forth in this section.

“(3) RATING OR COMPARABLE REQUIREMENT.—

“(A) IN GENERAL.—A national bank meets the requirements of this paragraph if—

“(i) the bank is 1 of the 50 largest insured banks and has not fewer than 1 issue of outstanding eligible debt that is currently rated within the 3 highest investment grade rating categories by a nationally recognized statistical rating organization; or

“(ii) the bank is 1 of the second 50 largest insured banks and meets the criteria set forth in clause (i) or such other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish by regulation and determine to be comparable to and consistent with the purposes of the rating required in clause (i).

“(B) CONSOLIDATED TOTAL ASSETS.—For purposes of this paragraph, the size of an insured bank shall be determined on the basis of the consolidated total assets of the bank as of the end of each calendar year.

“(4) FINANCIAL AGENCY SUBSIDIARY.—The requirement in paragraph (2)(E) shall not apply with respect to the ownership or control of a financial subsidiary that engages in activities described in subsection (b)(1) solely as agent and not directly or indirectly as principal.

“(5) REGULATIONS REQUIRED.—Before the end of the 270-day period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Comptroller of the Currency shall, by regulation, prescribe procedures to implement this section.

“(6) INDEXED ASSET LIMIT.—The dollar amount contained in paragraph (2)(D) shall be adjusted according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System.

“(7) COORDINATION WITH SECTION 4(l)(2) OF THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(l)(2) of the Bank Holding Company Act of 1956 applies to a national bank that controls a financial subsidiary in the manner provided in that section.

“(b) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

“(1) FINANCIAL ACTIVITIES.—

“(A) IN GENERAL.—An activity shall be financial in nature or incidental to such financial activity only if—

“(i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 4(k)(4) of the Bank Holding Company Act of 1956; or

“(ii) the Secretary of the Treasury determines the activity is financial in nature or incidental to a financial activity in accordance with subparagraph (B).

“(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

“(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

“(1) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this section for a determination of whether an activity is financial in nature or incidental to a financial activity.

“(II) BOARD VIEW.—The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this section if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate under the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

“(ii) PROPOSALS RAISED BY THE BOARD.—

“(I) BOARD RECOMMENDATION.—The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity for purposes of this section.

“(II) TIME PERIOD FOR SECRETARIAL ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this section, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

“(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account—

“(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

“(B) changes or reasonably expected changes in the marketplace in which banks compete;

“(C) changes or reasonably expected changes in the technology for delivering financial services; and

“(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

“(i) compete effectively with any company seeking to provide financial services in the United States;

“(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

“(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

“(3) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act and the Gramm-Leach-Bliley Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to a financial activity:

“(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

“(B) Providing any device or other instrumentality for transferring money or other financial assets.

“(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

“(c) CAPITAL DEDUCTION.—

“(1) CAPITAL DEDUCTION REQUIRED.—In determining compliance with applicable capital standards—

“(A) the aggregate amount of the outstanding equity investment, including retained earnings, of a national bank in all financial subsidiaries shall be deducted from the assets and tangible equity of the national bank; and

“(B) the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the national bank.

"(2) FINANCIAL STATEMENT DISCLOSURE OF CAPITAL DEDUCTION.—Any published financial statement of a national bank that controls a financial subsidiary shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (1).

"(d) SAFEGUARDS FOR THE BANK.—A national bank that establishes or maintains a financial subsidiary shall assure that—

"(1) the procedures of the national bank for identifying and managing financial and operational risks within the national bank and the financial subsidiary adequately protect the national bank from such risks;

"(2) the national bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the national bank and the financial subsidiaries of the national bank; and

"(3) the national bank is in compliance with this section.

"(e) PROVISIONS APPLICABLE TO NATIONAL BANKS THAT FAIL TO CONTINUE TO MEET CERTAIN REQUIREMENTS.—

"(1) IN GENERAL.—If a national bank or insured depository institution affiliate does not continue to meet the requirements of subsection (a)(2)(C) or subsection (d), the Comptroller of the Currency shall promptly give notice to the national bank to that effect describing the conditions giving rise to the notice.

"(2) AGREEMENT TO CORRECT CONDITIONS.—Not later than 45 days after the date of receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank shall execute an agreement with the Comptroller of the Currency and any relevant insured depository institution affiliate shall execute an agreement with its appropriate Federal banking agency to comply with the requirements of subsection (a)(2)(C) and subsection (d).

"(3) IMPOSITION OF CONDITIONS.—Until the conditions described in a notice under paragraph (1) are corrected—

"(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the Comptroller of the Currency determines to be appropriate under the circumstances and consistent with the purposes of this section; and

"(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of any relevant insured depository institution affiliate or any subsidiary of the institution as such agency determines to be appropriate under the circumstances and consistent with the purposes of this section.

"(4) FAILURE TO CORRECT.—If the conditions described in a notice to a national bank under paragraph (1) are not corrected within 180 days after the date of receipt by the national bank of the notice, the Comptroller of the Currency may require the national bank, under such terms and conditions as may be imposed by the Comptroller and subject to such extension of time as may be granted in the discretion of the Comptroller, to divest control of any financial subsidiary.

"(5) CONSULTATION.—In taking any action under this subsection, the Comptroller shall consult with all relevant Federal and State regulatory agencies and authorities.

"(f) FAILURE TO MAINTAIN PUBLIC RATING OR MEET APPLICABLE CRITERIA.—

"(1) IN GENERAL.—A national bank that does not continue to meet any applicable rating or other requirement of subsection (a)(2)(E) after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

"(2) EQUITY CAPITAL.—For purposes of this subsection, the term 'equity capital' includes, in

addition to any equity instrument, any debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

"(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) AFFILIATE, COMPANY, CONTROL, AND SUBSIDIARY.—The terms 'affiliate', 'company', 'control', and 'subsidiary' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956.

"(2) APPROPRIATE FEDERAL BANKING AGENCY, DEPOSITORY INSTITUTION, INSURED BANK, AND INSURED DEPOSITORY INSTITUTION.—The terms 'appropriate Federal banking agency', 'depository institution', 'insured bank', and 'insured depository institution' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.

"(3) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means any company that is controlled by 1 or more insured depository institutions other than a subsidiary that—

"(A) engages solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks; or

"(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act or the Bank Service Company Act.

"(4) ELIGIBLE DEBT.—The term 'eligible debt' means unsecured long-term debt that—

"(A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

"(B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

"(5) WELL CAPITALIZED.—The term 'well capitalized' has the meaning given the term in section 38 of the Federal Deposit Insurance Act.

"(6) WELL MANAGED.—The term 'well managed' means—

"(A) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

"(i) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

"(ii) at least a rating of 2 for management, if such rating is given; or

"(B) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory."

"(b) SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT.—

(1) LIMITING THE EXPOSURE OF A BANK TO A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE EXPOSURE TO AN AFFILIATE.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(A) by redesignating subsection (e) as subsection (f); and

(B) by inserting after subsection (d), the following new subsection:

"(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

"(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' means any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States.

"(2) FINANCIAL SUBSIDIARY TREATED AS AN AFFILIATE.—For purposes of applying this section

and section 23B, and notwithstanding subsection (b)(2) of this section or section 23B(d)(1), a financial subsidiary of a bank—

"(A) shall be deemed to be an affiliate of the bank; and

"(B) shall not be deemed to be a subsidiary of the bank.

"(3) EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.—

"(A) EXCEPTION FROM LIMIT ON COVERED TRANSACTIONS WITH ANY INDIVIDUAL FINANCIAL SUBSIDIARY.—Notwithstanding paragraph (2), the restriction contained in subsection (a)(1)(A) shall not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank.

"(B) EXCEPTION FOR EARNINGS RETAINED BY FINANCIAL SUBSIDIARIES.—Notwithstanding paragraph (2) or subsection (b)(7), a bank's investment in a financial subsidiary of the bank shall not include retained earnings of the financial subsidiary.

"(4) ANTI-EVASION PROVISION.—For purposes of this section and section 23B—

"(A) any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank shall be considered to be a purchase of or investment in such securities by the bank; and

"(B) any extension of credit by an affiliate of a bank to a financial subsidiary of the bank shall be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of this Act and the Gramm-Leach-Bliley Act."

(2) REBUTTABLE PRESUMPTION OF CONTROL OF PORTFOLIO COMPANY.—Section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)) is amended by adding at the end the following new paragraph—

"(1) REBUTTABLE PRESUMPTION OF CONTROL OF PORTFOLIO COMPANIES.—In addition to paragraph (3), a company or shareholder shall be presumed to control any other company if the company or shareholder, directly or indirectly, or acting through 1 or more other persons, owns or controls 15 percent or more of the equity capital of the other company pursuant to subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956 or rules adopted under section 122 of the Gramm-Leach-Bliley Act, if any, unless the company or shareholder provides information acceptable to the Board to rebut this presumption of control."

(3) RULEMAKING REQUIRED CONCERNING DERIVATIVE TRANSACTIONS AND INTRADAY CREDIT.—Section 23A(f) of the Federal Reserve Act (12 U.S.C. 371c(f)) (as so redesignated by paragraph (1)(A) of this subsection) is amended by inserting at the end the following new paragraph:

"(3) RULEMAKING REQUIRED CONCERNING DERIVATIVE TRANSACTIONS AND INTRADAY CREDIT.—

"(A) IN GENERAL.—Not later than 18 months after the date of the enactment of the Gramm-Leach-Bliley Act, the Board shall adopt final rules under this section to address as covered transactions credit exposure arising out of derivative transactions between member banks and their affiliates and intraday extensions of credit by member banks to their affiliates.

"(B) EFFECTIVE DATE.—The effective date of any final rule adopted by the Board pursuant to subparagraph (A) shall be delayed for such period as the Board deems necessary or appropriate to permit banks to conform their activities to the requirements of the final rule without undue hardship."

(c) ANTITITLING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971) is amended by adding at the end the following: "For purposes of this section, a financial subsidiary of a national bank engaging in activities pursuant to section 5136A(a) of the Revised Statutes of the United States shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank."

(d) SAFETY AND SOUNDNESS FIREWALLS FOR STATE BANKS WITH FINANCIAL SUBSIDIARIES.—

(1) **FEDERAL DEPOSIT INSURANCE ACT.**—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 45 (as added by section 112(b) of this title) the following new section:

**“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO FINANCIAL SUBSIDIARIES OF BANKS.**

“(a) **IN GENERAL.**—An insured State bank may control or hold an interest in a subsidiary that engages in activities as principal that would only be permissible for a national bank to conduct through a financial subsidiary if—

“(1) the State bank and each insured depository institution affiliate of the State bank are well capitalized (after the capital deduction required by paragraph (2));

“(2) the State bank complies with the capital deduction and financial statement disclosure requirements in section 5136A(c) of the Revised Statutes of the United States;

“(3) the State bank complies with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United States; and

“(4) the State bank complies with the amendments to sections 23A and 23B of the Federal Reserve Act made by section 121(b) of the Gramm-Leach-Bliley Act.

“(b) **PRESERVATION OF EXISTING SUBSIDIARIES.**—Notwithstanding subsection (a), an insured State bank may retain control of a subsidiary, or retain an interest in a subsidiary, that the State bank lawfully controlled or acquired before the date of the enactment of the Gramm-Leach-Bliley Act, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date.

“(c) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

“(1) **SUBSIDIARY.**—The term ‘subsidiary’ means any company that is a subsidiary (as defined in section 3(w)(4) of 1 or more insured banks.

“(2) **FINANCIAL SUBSIDIARY.**—The term ‘financial subsidiary’ has the meaning given the term in section 5136A(g) of the Revised Statutes of the United States.

“(d) **PRESERVATION OF AUTHORITY.**—

“(1) **FEDERAL DEPOSIT INSURANCE ACT.**—No provision of this section shall be construed as superseding the authority of the Federal Deposit Insurance Corporation to review subsidiary activities under section 24.

“(2) **FEDERAL RESERVE ACT.**—No provision of this section shall be construed as affecting the applicability of the 20th undesignated paragraph of section 9 of the Federal Reserve Act.”.

(2) **FEDERAL RESERVE ACT.**—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end the following: “This paragraph shall not apply to any interest held by a State member bank in accordance with section 5136A of the Revised Statutes of the United States and subject to the same conditions and limitations provided in such section.”.

(e) **CLERICAL AMENDMENT.**—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136B; and

(2) by inserting after the item relating to section 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

**SEC. 122. CONSIDERATION OF MERCHANT BANKING ACTIVITIES BY FINANCIAL SUBSIDIARIES.**

After the end of the 5-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may, if appropriate, after considering—

(1) the experience with the effects of financial modernization under this Act and merchant

banking activities of financial holding companies;

(2) the potential effects on depository institutions and the financial system of allowing merchant banking activities in financial subsidiaries; and

(3) other relevant facts;

jointly adopt rules that permit financial subsidiaries to engage in merchant banking activities described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956, under such terms and conditions as the Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly determine to be appropriate.

**Subtitle D—Preservation of FTC Authority**

**SEC. 131. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.**

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting “and, if the transaction also involves an acquisition under section 4, the Board shall also notify the Federal Trade Commission of such approval” before the period at the end of the first sentence.

**SEC. 132. INTERAGENCY DATA SHARING.**

(a) **IN GENERAL.**—To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3 or 4 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners’ Loan Act, or the antitrust laws.

(b) **CONFIDENTIALITY REQUIREMENTS.**—

(1) **IN GENERAL.**—Any information or material obtained by any agency pursuant to subsection (a) shall be treated as confidential.

(2) **PROCEDURES FOR DISCLOSURE.**—If any information or material obtained by any agency pursuant to subsection (a) is proposed to be disclosed to a third party, written notice of such disclosure shall first be provided to the agency from which such information or material was obtained and an opportunity shall be given to such agency to oppose or limit the proposed disclosure.

(3) **OTHER PRIVILEGES NOT WAIVED BY DISCLOSURE UNDER THIS SECTION.**—The provision by any Federal agency of any information or material pursuant to subsection (a) to another agency shall not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under Federal or State law.

(4) **EXCEPTION.**—No provision of this section shall be construed as preventing or limiting access to any information by any duly authorized committee of the Congress or the Comptroller General of the United States.

(c) **BANKING AGENCY INFORMATION SHARING.**—The provisions of subsection (b) shall apply to—

(1) any information or material obtained by any Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) from any other Federal banking agency; and

(2) any report of examination or other confidential supervisory information obtained by any State agency or authority, or any other person, from a Federal banking agency.

**SEC. 133. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.**

(a) **CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.**—Any person that directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly

under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of any provisions applied by the Federal Trade Commission under the Federal Trade Commission Act.

(b) **SAVINGS PROVISION.**—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) **HART-SCOTT-RODINO AMENDMENTS.**—

(1) **BANKS.**—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end the following: “, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956”.

(2) **BANK HOLDING COMPANIES.**—Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is amended by inserting before the semicolon at the end the following: “, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 4 of the Bank Holding Company Act of 1956”.

**Subtitle E—National Treatment**

**SEC. 141. FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.**

Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end the following new paragraph:

“(3) **TERMINATION OF GRANDFATHERED RIGHTS.**—

“(A) **IN GENERAL.**—If any foreign bank or foreign company files a declaration under section 4(l)(1)(C) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity that the Board has determined to be permissible for financial holding companies under section 4(k) of such Act shall terminate immediately.

“(B) **RESTRICTIONS AND REQUIREMENTS AUTHORIZED.**—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity that the Board has determined to be permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section by the end of the 2-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 114 of the Gramm-Leach-Bliley Act.”.

**SEC. 142. REPRESENTATIVE OFFICES.**

(a) **DEFINITION.**—Section 1(b)(15) of the International Banking Act of 1978 (12 U.S.C. 3101(15)) is amended by striking “State agency, or subsidiary of a foreign bank” and inserting “or State agency”.

(b) **EXAMINATIONS.**—Section 10(c) of the International Banking Act of 1978 (12 U.S.C. 3107(c)) is amended by adding at the end the following new sentence: “The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board

deems it necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956, or other applicable Federal banking law.”

#### **Subtitle F—Direct Activities of Banks**

#### **SEC. 151. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.**

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: “In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank’s own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).”

#### **Subtitle G—Effective Date**

#### **SEC. 161. EFFECTIVE DATE.**

This title (other than section 104) and the amendments made by this title shall take effect 120 days after the date of the enactment of this Act.

### **TITLE II—FUNCTIONAL REGULATION**

#### **Subtitle A—Brokers and Dealers**

#### **SEC. 201. DEFINITION OF BROKER.**

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

“(4) BROKER.—

“(A) IN GENERAL.—The term ‘broker’ means any person engaged in the business of effecting transactions in securities for the account of others.

“(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

“(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

“(I) such broker or dealer is clearly identified as the person performing the brokerage services; “(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

“(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

“(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

“(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

“(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

“(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

“(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

“(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

“(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

“(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and “(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

“(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

“(I) commercial paper, bankers acceptances, or commercial bills;

“(II) exempted securities;

“(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

“(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

“(iv) CERTAIN STOCK PURCHASE PLANS.—

“(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

“(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer’s dividend reinvestment plan, if—

“(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

“(bb) the bank does not net shareholders’ buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

“(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer’s shares, if—

“(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

“(bb) the bank does not net shareholders’ buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

“(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

“(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Gramm-Leach-Bliley Act; or

“(bb) otherwise permitted by the Commission.

“(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

“(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

“(I) a registered broker or dealer; or

“(II) an affiliate that is engaged in merchant banking, as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956.

“(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

“(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

“(II) at any time after the date that is 1 year after the date of the enactment of the Gramm-Leach-Bliley Act, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

“(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

“(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

“(I) IN GENERAL.—The bank, as part of customary banking activities—

“(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

“(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers’ transactions in securities;

“(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

“(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided



under applicable law, if the bank maintains records separately identifying the securities and the customer; or

"(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

"(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

"(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

"(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

"(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

"(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

"(i) the bank directs such trade to a registered broker or dealer for execution;

"(ii) the trade is a cross trade or other substantially similar trade of a security that—

"(I) is made by the bank or between the bank and an affiliated fiduciary; and

"(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

"(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

"(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—

"(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

"(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

"(iii) in any other similar capacity.

"(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

"(i) was, on the day before the date of enactment of the Gramm-Leach-Bliley Act, subject to section 15(e); and

"(ii) is subject to such restrictions and requirements as the Commission considers appropriate."

#### SEC. 202. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5) DEALER.—

"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells se-

curities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

"(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

"(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities;

"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

"(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

"(I) for the bank; or

"(II) for accounts for which the bank acts as a trustee or fiduciary.

"(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

"(I) the bank;

"(II) an affiliate of any such bank other than a broker or dealer; or

"(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

"(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act."

#### SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by inserting after subsection (i) the following new subsection:

"(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of the enactment of the Gramm-Leach-Bliley Act, engaged in effecting such sales."

#### SEC. 204. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

"(t) RECORDKEEPING REQUIREMENTS.—

"(I) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

"(2) AVAILABILITY TO COMMISSION; CONFIDENTIALITY.—Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(3) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission."

#### SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

"(1) CONSULTATION.—Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

"(2) LIMITATION.—The Commission shall not—

"(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

"(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

"(3) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

"(A) the new hybrid product is a security; and

"(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

"(4) CONSIDERATIONS.—In making a determination under paragraph (3), the Commission shall consider—

"(A) the nature of the new hybrid product; and

"(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

"(5) OBJECTION TO COMMISSION REGULATION.—

"(A) FILING OF PETITION FOR REVIEW.—The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

"(B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as

possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

“(C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

“(D) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

“(i) the subject product is a new hybrid product, as defined in this subsection;

“(ii) the subject product is a security; and

“(iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

“(E) JUDICIAL STAY.—The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

“(F) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 25 of this title.

“(G) DEFINITIONS.—For purposes of this subsection:

“(A) NEW HYBRID PRODUCT.—The term ‘new hybrid product’ means a product that—

“(i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act;

“(ii) is not an identified banking product as such term is defined in section 206 of such Act; and

“(iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

“(B) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”

#### SEC. 206. DEFINITION OF IDENTIFIED BANKING PRODUCT.

(a) DEFINITION OF IDENTIFIED BANKING PRODUCT.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5)), the term “identified banking product” means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker's acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934) shall not be treated as an identified banking product.

(b) DEFINITION OF SWAP AGREEMENT.—For purposes of subsection (a)(6), the term “swap agreement” means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include any other identified banking product, as defined in paragraphs (1) through (5) of subsection (a).

(c) CLASSIFICATION LIMITED.—Classification of a particular product as an identified banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(d) INCORPORATED DEFINITIONS.—For purposes of this section, the terms “bank” and “qualified investor” have the same meanings as given in section 3(a) of the Securities Exchange Act of 1934, as amended by this Act.

#### SEC. 207. ADDITIONAL DEFINITIONS.

Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraph:

“(54) QUALIFIED INVESTOR.—

“(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this title, the term ‘qualified investor’ means—

“(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

“(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

“(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

“(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

“(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

“(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

“(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

“(viii) any associated person of a broker or dealer other than a natural person;

“(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

“(x) the government of any foreign country;

“(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

“(xii) any natural person who owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

“(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or

“(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

“(B) ALTERED THRESHOLDS FOR ASSET-BACK SECURITIES AND LOAN PARTICIPATIONS.—For pur-

poses sections 3(a)(5)(C)(iii) of this title and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term ‘qualified investor’ has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting ‘\$10,000,000’ for ‘\$25,000,000’.

“(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a ‘qualified investor’ as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.”

#### SEC. 208. GOVERNMENT SECURITIES DEFINED.

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking “or” at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.”

#### SEC. 209. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act.

#### SEC. 210. RULE OF CONSTRUCTION.

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

#### Subtitle B—Bank Investment Company Activities

#### SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking “(f) Every registered” and inserting the following:

“(f) CUSTODY OF SECURITIES.—

“(1) Every registered”;

(3) by redesignating the second, third, fourth, and fifth sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

(4) by adding at the end the following new paragraph:

“(6) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.”

(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a-26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).”

**SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.**

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(a)) is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ";; or"; and

(3) by adding at the end the following new paragraph:

"(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), prescribe or issue consistent with the protection of investors."

**SEC. 213. INDEPENDENT DIRECTORS.**

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) the investment company;

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

"(III) any account over which the investment company's investment adviser has brokerage placement discretion,";

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

"(I) the investment company;

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

"(III) any account for which the investment company's investment adviser has borrowing authority,".

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(B)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) any investment company for which the investment adviser or principal underwriter serves as such;

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

"(III) any account over which the investment adviser has brokerage placement discretion,";

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

"(I) any investment company for which the investment adviser or principal underwriter serves as such;

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

"(III) any account for which the investment adviser has borrowing authority,".

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)) is amended by striking "bank, except" and inserting "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except".

**SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-34(a)) is amended to read as follows:

"(a) MISREPRESENTATION OF GUARANTEES.—

"(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

"(B) has been insured by the Federal Deposit Insurance Corporation; or

"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

"(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the same meanings as given in section 3 of the Federal Deposit Insurance Act."

**SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

"(6) The term 'broker' has the same meaning as given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies."

**SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as follows:

"(11) The term 'dealer' has the same meaning as given in the Securities Exchange Act of 1934,

but does not include an insurance company or investment company."

**SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.**

(a) INVESTMENT ADVISER.—Section 202(a)(11)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)(A)) is amended by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

"(26) The term 'separately identifiable department or division' of a bank means a unit—

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940."

**SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) The term 'broker' has the same meaning as given in section 3 of the Securities Exchange Act of 1934."

**SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) The term 'dealer' has the same meaning as given in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company."

**SEC. 220. INTERAGENCY CONSULTATION.**

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting after section 210 the following new section:

**"SEC. 210A. CONSULTATION.**

"(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

"(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access—

"(A) with respect to the investment advisory activities of any—

"(i) bank holding company;

"(ii) bank; or

"(iii) separately identifiable department or division of a bank, that is registered under section 203 of this title; and

"(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company.

“(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

“(3) Notwithstanding any other provision of law, the Commission and the appropriate Federal banking agencies shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the Commission or such agencies to withhold information from Congress, or prevent the Commission or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the Commission, or such agencies. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company (or affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.

“(c) DEFINITION.—For purposes of this section, the term ‘appropriate Federal banking agency’ shall have the same meaning as given in section 3 of the Federal Deposit Insurance Act.”

#### SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking “or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian” and inserting “or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

“(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940.”

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by inserting before the period the following: “, if—

“(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

“(B) except in connection with the ordinary advertising of the bank’s fiduciary services, interests in such fund are not—

“(i) advertised; or

“(ii) offered for sale to the general public; and

“(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law”.

#### SEC. 222. STATUTORY DISQUALIFICATION FOR BANK WRONGDOING.

Section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and (2) by striking “securities dealer, transfer agent,” and inserting “securities dealer, bank, transfer agent,”.

#### SEC. 223. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “(A) a banking institution organized under the laws of the United States” and inserting “(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)”.

#### SEC. 224. CONFORMING AMENDMENT.

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2) is amended by adding at the end the following new subsection:

“(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”

#### SEC. 225. EFFECTIVE DATE.

This subtitle shall take effect 18 months after the date of the enactment of this Act.

#### Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

#### SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by redesignating subsection (i) as subsection (k); and

(2) by inserting after subsection (h) the following new subsections:

“(i) INVESTMENT BANK HOLDING COMPANIES.—

“(I) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

“(A) IN GENERAL.—An investment bank holding company that is not—

“(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f) of the Bank Holding Company Act of 1956), or a savings association;

“(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

“(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

“(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

“(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

“(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until 1 year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

“(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

“(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

“(A) RECORDKEEPING AND REPORTING.—

“(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

“(I) the company’s or affiliate’s activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

“(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

“(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

“(I) a balance sheet and income statement;

“(II) an assessment of the consolidated capital of the supervised investment bank holding company;

“(III) an independent auditor’s report attesting to the supervised investment bank holding company’s compliance with its internal risk management and internal control objectives; and

“(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

“(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

“(C) EXAMINATION AUTHORITY.—

“(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

“(I) inform the Commission regarding—

“(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

“(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

“(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

“(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the ‘Bank Secrecy Act’) and regulations thereunder.

“(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

“(I) the company; and

“(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

“(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

“(4) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

“(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

“(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

“(5) DEFINITIONS.—For purposes of this subsection:

“(A) The term ‘investment bank holding company’ means—

“(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

“(ii) the associated persons of the investment bank holding company.

“(B) The term ‘supervised investment bank holding company’ means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

“(C) The terms ‘affiliate’, ‘bank’, ‘bank holding company’, ‘company’, ‘control’, and ‘savings association’ have the same meanings as given in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

“(D) The term ‘insured bank’ has the same meaning as given in section 3 of the Federal Deposit Insurance Act.

“(E) The term ‘foreign bank’ has the same meaning as given in section 1(b)(7) of the International Banking Act of 1978.

“(F) The terms ‘person associated with an investment bank holding company’ and ‘associ-

ated person of an investment bank holding company’ mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

“(j) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.”

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraph:

“(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

“(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

“(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

“(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

“(iv) the Commission in the case of all other such institutions.”

(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking “this title” and inserting “law”; and

(B) by inserting “, examination reports” after “financial records”.

#### Subtitle D—Banks and Bank Holding Companies

##### SEC. 241. CONSULTATION.

(a) IN GENERAL.—The Securities and Exchange Commission shall consult and coordinate comments with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves in its financial statement, including the amount of any such loan loss reserve.

(b) DEFINITIONS.—For purposes of subsection (a), the terms “insured depository institution”, “depository institution holding company”, and “appropriate Federal banking agency” have the same meaning as given in section 3 of the Federal Deposit Insurance Act.

#### TITLE III—INSURANCE

##### Subtitle A—State Regulation of Insurance

##### SEC. 301. FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the eleventh undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

##### SEC. 302. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 303, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term “insurance” means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers’ compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(d) **RULE OF CONSTRUCTION.**—For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

**SEC. 303. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.**

(a) **GENERAL PROHIBITION.**—No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) **NONDISCRIMINATION PARITY EXCEPTION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) **COORDINATION WITH "WILDCARD" PROVISION.**—A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) **GRANDFATHERING WITH CONSISTENT REGULATION.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) **INSURANCE AFFILIATE.**—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) **INSURANCE SUBSIDIARY.**—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) **"AFFILIATE" AND "SUBSIDIARY" DEFINED.**—For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) **RULE OF CONSTRUCTION.**—No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

**SEC. 304. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.**

(a) **FILING IN COURT OF APPEALS.**—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) **EXPEDITED REVIEW.**—The United States Court of Appeals in which a petition for review

is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) **SUPREME COURT REVIEW.**—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) **STATUTE OF LIMITATION.**—No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) **STANDARD OF REVIEW.**—The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

**SEC. 305. INSURANCE CUSTOMER PROTECTIONS.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 46, as added by section 121(d) of this Act, the following new section:

**"SEC. 47. INSURANCE CUSTOMER PROTECTIONS.**

**"(a) REGULATIONS REQUIRED.**—

**"(1) IN GENERAL.**—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, customer protection regulations (which the agencies jointly determine to be appropriate) that—

**"(A)** apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

**"(B)** are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

**"(2) APPLICABILITY TO SUBSIDIARIES.**—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

**"(3) CONSULTATION AND JOINT REGULATIONS.**—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

**"(b) SALES PRACTICES.**—The regulations prescribed pursuant to subsection (a) shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

**"(1)** the purchase of an insurance product from the institution or any of its affiliates; or

**"(2)** an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

**"(c) DISCLOSURES AND ADVERTISING.**—The regulations prescribed pursuant to subsection

(a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

**"(I) DISCLOSURES.**—

**"(A) IN GENERAL.**—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

**"(i) UNINSURED STATUS.**—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

**"(ii) INVESTMENT RISK.**—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

**"(iii) COERCION.**—The approval of an extension of credit may not be conditioned on—

**"(I)** the purchase of an insurance product from the institution in which the application for credit is pending or any of affiliate of the institution; or

**"(II)** an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

**"(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.**—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

**"(i) 'NOT FDIC—INSURED'.**

**"(ii) 'NOT GUARANTEED BY THE BANK'.**

**"(iii) 'MAY GO DOWN IN VALUE'.**

**"(iv) 'NOT INSURED BY ANY GOVERNMENT AGENCY'.**

**"(C) LIMITATION.**—Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

**"(D) MEANINGFUL DISCLOSURES.**—Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

**"(E) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.**—In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

**"(F) CONSUMER ACKNOWLEDGMENT.**—A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

**"(2) PROHIBITION ON MISREPRESENTATIONS.**—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

**"(A)** the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

**"(B)** in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

**"(C)** in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—



“(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

“(ii) the customer is free to purchase the insurance product from another source.

“(d) SEPARATION OF BANKING AND NON-BANKING ACTIVITIES.—

“(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

“(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

“(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

“(B) REFERRALS.—Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

“(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

“(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

“(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

“(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

“(3) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term ‘domestic violence’ means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

“(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

“(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

“(C) Subjecting another person to false imprisonment.

“(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

“(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer com-

plaints alleging a violation of regulations issued under the section, which shall—

“(1) establish a group within each regulatory agency to receive such complaints;

“(2) develop procedures for investigating such complaints;

“(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

“(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

“(g) EFFECT ON OTHER AUTHORITY.—

“(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

“(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

“(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

“(2) COORDINATION WITH STATE LAW.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

“(B) PREEMPTION.—

“(i) IN GENERAL.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

“(ii) CONSIDERATIONS.—Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

“(iii) FEDERAL PREEMPTION AND ABILITY OF STATES TO OVERRIDE FEDERAL PREEMPTION.—If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

“(h) NON-DISCRIMINATION AGAINST NON-AFFILIATED AGENTS.—The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) shall not have the effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.”.

#### SEC. 306. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

Except as provided in section 104(c)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

#### SEC. 307. INTERAGENCY CONSULTATION.

(a) PURPOSE.—It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised

by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) **STATE INSURANCE REGULATOR INFORMATION.**—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) **CONSULTATION.**—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) **EFFECT ON OTHER AUTHORITY.**—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) **CONFIDENTIALITY AND PRIVILEGE.**—

(1) **CONFIDENTIALITY.**—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) **PRIVILEGE.**—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **APPROPRIATE FEDERAL BANKING AGENCY; DEPOSITORY INSTITUTION.**—The terms “appropriate Federal banking agency” and “depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) **BOARD AND FINANCIAL HOLDING COMPANY.**—The terms “Board” and “financial holding company” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

#### SEC. 308. DEFINITION OF STATE.

For purposes of this subtitle, the term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

#### Subtitle B—Redomestication of Mutual Insurers

#### SEC. 311. GENERAL APPLICATION.

This subtitle shall only apply to a mutual insurance company in a State which has not en-

acted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

#### SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.

(a) **REDOMESTICATION.**—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) **RESULTING DOMICILE.**—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) **LICENSES PRESERVED.**—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) **EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.**—

(1) **IN GENERAL.**—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) **FORMS.**—

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) **NOTICE.**—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) **PROCEDURAL REQUIREMENTS.**—No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) **APPROVAL BY BOARD OF DIRECTORS AND POLICYHOLDERS.**—The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) **CONTINUED VOTING CONTROL BY POLICYHOLDERS; REVIEW OF PUBLIC STOCK OFFERING.**—After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the

reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) **AWARD OF STOCK OR GRANT OF OPTIONS TO OFFICERS AND DIRECTORS.**—During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) **POLICYHOLDER RIGHTS.**—Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) **FAIR AND EQUITABLE TREATMENT OF POLICYHOLDERS.**—The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

#### SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) **IN GENERAL.**—Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) **DIFFERENTIAL TREATMENT PROHIBITED.**—No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) **LAWS PROHIBITING OPERATIONS.**—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would

make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

#### SEC. 314. OTHER PROVISIONS.

(a) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### SEC. 315. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) COURT OF COMPETENT JURISDICTION.—The term "court of competent jurisdiction" means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.

(2) DOMICILE.—The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) INSURANCE LICENSEE.—The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) INSTITUTION.—The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) LICENSED STATE.—The term "licensed State" means any State, the District of Colum-

bia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL INSURER.—The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) PERSON.—The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) POLICYHOLDER.—The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) REDOMESTICATED INSURER.—The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subtitle.

(10) REDOMESTICATING INSURER.—The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subtitle.

(11) REDOMESTICATION OR TRANSFER.—The term "redomestication" or "transfer" means the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(12) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) STATE LAW.—The term "State law" means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) TRANSFEREE DOMICILE.—The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(15) TRANSFEROR DOMICILE.—The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

#### SEC. 316. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

#### Subtitle C—National Association of Registered Agents and Brokers

#### SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of the enactment of this Act, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the

appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—

At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC") shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the NAIC's determination under this section and such court shall apply the standards set forth in section 706 of

title 5, United States Code, when reviewing any such challenge.

(e) **CONTINUED APPLICATION.**—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) **SAVINGS PROVISION.**—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) **UNIFORM LICENSING.**—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

#### **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.**

(a) **ESTABLISHMENT.**—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association").

(b) **STATUS.**—The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y-1001 et seq.).

#### **SEC. 323. PURPOSE.**

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

#### **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

The Association shall be subject to the supervision and oversight of the NAIC.

#### **SEC. 325. MEMBERSHIP.**

(a) **ELIGIBILITY.**—

(1) **IN GENERAL.**—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) **INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.**—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) **RESUMPTION OF ELIGIBILITY.**—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) **AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.**—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) **ESTABLISHMENT OF CLASSES AND CATEGORIES.**—

(1) **CLASSES OF MEMBERSHIP.**—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) **CATEGORIES.**—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are depository institutions or for their employees, agents, or affiliates.

(d) **MEMBERSHIP CRITERIA.**—

(1) **IN GENERAL.**—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) **MINIMUM STANDARD.**—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) **EFFECT OF MEMBERSHIP.**—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) **ANNUAL RENEWAL.**—Membership in the Association shall be renewed on an annual basis.

(g) **CONTINUING EDUCATION.**—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) **SUSPENSION AND REVOCATION.**—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) **OFFICE OF CONSUMER COMPLAINTS.**—

(1) **IN GENERAL.**—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) **RECORDS AND REFERRALS.**—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) **TELEPHONE AND OTHER ACCESS.**—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative

means of communication with consumers, such as an Internet home page.

#### **SEC. 326. BOARD OF DIRECTORS.**

(a) **ESTABLISHMENT.**—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) **POWERS.**—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) **COMPOSITION.**—

(1) **MEMBERS.**—The Board shall be composed of 7 members appointed by the NAIC.

(2) **REQUIREMENT.**—At least 4 of the members of the Board shall each have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) **INITIAL BOARD MEMBERSHIP.**—

(A) **IN GENERAL.**—If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) **ALTERNATE COMPOSITION.**—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) **INOPERABILITY.**—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) **TERMS.**—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with one-third of the directors to be appointed each year.

(e) **BOARD VACANCIES.**—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) **MEETINGS.**—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

#### **SEC. 327. OFFICERS.**

(a) **IN GENERAL.**—

(1) **POSITIONS.**—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) **MANNER OF SELECTION.**—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) **CRITERIA FOR CHAIRPERSON.**—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

#### **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

(a) **ADOPTION AND AMENDMENT OF BYLAWS.**—

(1) **COPY REQUIRED TO BE FILED WITH THE NAIC.**—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) **EFFECTIVE DATE.**—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) **DISAPPROVAL BY THE NAIC.**—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) **ADOPTION AND AMENDMENT OF RULES.**—

(1) **FILING PROPOSED REGULATIONS WITH THE NAIC.**—

(A) **IN GENERAL.**—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) **OTHER RULES AND AMENDMENTS INEFFECTIVE.**—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) **INITIAL CONSIDERATION BY THE NAIC.**—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) **NAIC PROCEEDINGS.**—

(A) **IN GENERAL.**—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) **DISPOSITION OF PROPOSAL.**—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) **EXTENSION OF TIME FOR CONSIDERATION.**—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) such longer period as to which the Association consents.

(4) **STANDARDS FOR REVIEW.**—

(A) **GROUND FOR APPROVAL.**—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) **APPROVAL BEFORE END OF NOTICE PERIOD.**—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) **ALTERNATE PROCEDURE.**—

(A) **IN GENERAL.**—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to

the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) **ABROGATION BY THE NAIC.**—

(i) **IN GENERAL.**—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refilled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) **EFFECT OF RECONSIDERATION BY THE NAIC.**—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) **ACTION REQUIRED BY THE NAIC.**—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule, or amendment of the Association, whenever adopted.

(d) **DISCIPLINARY ACTION BY THE ASSOCIATION.**—

(1) **SPECIFICATION OF CHARGES.**—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) **SUPPORTING STATEMENT.**—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) **NAIC REVIEW OF DISCIPLINARY ACTION.**—

(1) **NOTICE TO THE NAIC.**—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) **REVIEW BY THE NAIC.**—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) **EFFECT OF REVIEW.**—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) **SCOPE OF REVIEW.**—

(1) **IN GENERAL.**—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) **DISMISSAL OF REVIEW.**—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

**SEC. 329. ASSESSMENTS.**

(a) **INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.**—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) **NAIC ASSESSMENTS.**—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

**SEC. 330. FUNCTIONS OF THE NAIC.**

(a) **ADMINISTRATIVE PROCEDURE.**—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) **EXAMINATIONS AND REPORTS.**—

(1) **EXAMINATIONS.**—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) **REPORT BY ASSOCIATION.**—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

**SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.**

(a) **IN GENERAL.**—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) **LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.**—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

**SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

(a) **IN GENERAL.**—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United

States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the NAIC.

(2) PROCEDURES FOR OBTAINING NAIC APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

#### SEC. 333. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) PROHIBITED ACTIONS.—No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be li-

censed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

#### SEC. 334. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

#### SEC. 335. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

#### SEC. 336. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) INSURANCE.—The term "insurance" means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) STATE.—The term "State" includes any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(5) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

#### Subtitle D—Rental Car Agency Insurance Activities

#### SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHICLE RENTALS.

(a) PROTECTION AGAINST RETROACTIVE APPLICATION OF REGULATORY AND LEGAL ACTION.—Except as provided in subsection (b), during the 3-year period beginning on the date of the enactment of this Act, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) PREEMINENCE OF STATE INSURANCE LAW.—No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action, which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) SCOPE OF APPLICATION.—This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) MOTOR VEHICLE DEFINED.—For purposes of this section, the term "motor vehicle" has the same meaning as in section 13102 of title 49, United States Code.

#### TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

#### SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

"(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

"(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—



“(i) under paragraph (1)(C) or (2) of this subsection; or

“(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956.

“(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

“(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on May 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that—

“(i) meets and continues to meet the requirements of paragraph (3); and

“(ii) continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

“(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—

“(i) involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

“(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

“(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

“(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

“(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

“(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.”

(b) CONFORMING AMENDMENT.—Section 10(o)(5)(E) of the Home Owners' Loan Act (12 U.S.C. 1467a(o)(5)(E)) is amended by striking “, except subparagraph (B)” and inserting “or (c)(9)(A)(ii)”.

(c) RULE OF CONSTRUCTION FOR CERTAIN APPLICATIONS.—

(1) IN GENERAL.—In the case of a company that—

(A) submits an application with the Director of the Office of Thrift Supervision before the

date of the enactment of this Act to convert a State-chartered trust company controlled by such company on May 4, 1999, to a savings association; and

(B) controlled a subsidiary on May 4, 1999, that had submitted an application to the Director on September 2, 1998;

the company (including any subsidiary controlled by such company as of such date of enactment) shall be treated as having filed such conversion application with the Director before May 4, 1999, for purposes of section 10(c)(9)(C) of the Home Owners' Loan Act (as added by subsection (a)).

(2) DEFINITIONS.—For purposes of paragraph (1), the terms “company”, “control”, “savings association”, and “subsidiary” have the meanings given those terms in section 10 of the Home Owners' Loan Act.

## TITLE V—PRIVACY

### Subtitle A—Disclosure of Nonpublic Personal Information

#### SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFORMATION.

(a) PRIVACY OBLIGATION POLICY.—It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) FINANCIAL INSTITUTIONS SAFEGUARDS.—In furtherance of the policy in subsection (a), each agency or authority described in section 505(A) shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

#### SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.

(a) NOTICE REQUIREMENTS.—Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503.

(b) OPT OUT.—

(1) IN GENERAL.—A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) EXCEPTION.—This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the pro-

viding of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) LIMITS ON REUSE OF INFORMATION.—Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) LIMITATIONS ON THE SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES.—A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) GENERAL EXCEPTIONS.—Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

(a) **DISCLOSURE REQUIRED.**—At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

Such disclosures shall be made in accordance with the regulations prescribed under section 504.

(b) **INFORMATION TO BE INCLUDED.**—The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

**SEC. 504. RULEMAKING.**

(a) **REGULATORY AUTHORITY.**—

(1) **RULEMAKING.**—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission shall each prescribe, after consultation as appropriate with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, such regulations as may be necessary to carry out the purposes of this subtitle with respect to the financial institutions subject to their jurisdiction under section 505.

(2) **COORDINATION, CONSISTENCY, AND COMPARABILITY.**—Each of the agencies and authorities required under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and authorities for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency and authority are consistent and comparable with the regulations prescribed by the other such agencies and authorities.

(3) **PROCEDURES AND DEADLINE.**—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States

Code, and shall be issued in final form not later than 6 months after the date of the enactment of this Act.

(b) **AUTHORITY TO GRANT EXCEPTIONS.**—The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 502 as are deemed consistent with the purposes of this subtitle.

**SEC. 505. ENFORCEMENT.**

(a) **IN GENERAL.**—This subtitle and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision.

(2) Under the Federal Credit Union Act, by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act.

(7) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(b) **ENFORCEMENT OF SECTION 501.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the agencies and authorities described in subsection (a) shall implement the standards prescribed under section 501(b) in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) **EXCEPTION.**—The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 501(b) by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) **ABSENCE OF STATE ACTION.**—If a State insurance authority fails to adopt regulations to carry out this subtitle, such State shall not be eligible to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under section 47(a) of such Act.

(d) **DEFINITIONS.**—The terms used in subsection (a)(1) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the same meaning as given in section 1(b) of the International Banking Act of 1978.

**SEC. 506. PROTECTION OF FAIR CREDIT REPORTING ACT.**

(a) **AMENDMENT.**—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(1) in subsection (d), by striking everything following the end of the second sentence; and

(2) by striking subsection (e) and inserting the following:

“(e) **REGULATORY AUTHORITY.**—

“(1) The Federal banking agencies referred to in paragraphs (1) and (2) of subsection (b) shall jointly prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraphs (1) and (2) of subsection (b), and the Board of Governors of the Federal Reserve System shall have authority to prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies.

“(2) The Board of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraph (3) of subsection (b).”.

(b) **CONFORMING AMENDMENT.**—Section 621(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is amended by striking paragraph (4).

(c) **RELATION TO OTHER PROVISIONS.**—Except for the amendments made by subsections (a) and (b), nothing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of this title regarding whether information is transaction or experience information under section 603 of such Act.

**SEC. 507. RELATION TO STATE LAWS.**

(a) **IN GENERAL.**—This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) **GREATER PROTECTION UNDER STATE LAW.**—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

**SEC. 508. STUDY OF INFORMATION SHARING AMONG FINANCIAL AFFILIATES.**

(a) **IN GENERAL.**—The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) **CONSULTATION.**—The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) **REPORT.**—On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

**SEC. 509. DEFINITIONS.**

As used in this subtitle:

(1) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” has the same meaning as given in section 3 of the Federal Deposit Insurance Act.

(2) **FEDERAL FUNCTIONAL REGULATOR.**—The term “Federal functional regulator” means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board; and

(F) the Securities and Exchange Commission.

(3) **FINANCIAL INSTITUTION.**—

(A) **IN GENERAL.**—The term “financial institution” means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956.

(B) **PERSONS SUBJECT TO CFTC REGULATION.**—Notwithstanding subparagraph (A), the term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(C) **FARM CREDIT INSTITUTIONS.**—Notwithstanding subparagraph (A), the term “financial institution” does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(D) **OTHER SECONDARY MARKET INSTITUTIONS.**—Notwithstanding subparagraph (A), the

term “financial institution” does not include institutions chartered by Congress specifically to engage in transactions described in section 502(e)(1)(C), as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) **NONPUBLIC PERSONAL INFORMATION.**—

(A) The term “nonpublic personal information” means personally identifiable financial information—

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 504.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) **NONAFFILIATED THIRD PARTY.**—The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) **AFFILIATE.**—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(7) **NECESSARY TO EFFECT, ADMINISTER, OR ENFORCE.**—The term “as necessary to effect, administer, or enforce the transaction” means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer’s account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer’s agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer’s request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer’s insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment

card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) **STATE INSURANCE AUTHORITY.**—The term “State insurance authority” means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) **CONSUMER.**—The term “consumer” means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) **JOINT AGREEMENT.**—The term “joint agreement” means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 504.

(11) **CUSTOMER RELATIONSHIP.**—The term “time of establishing a customer relationship” shall be defined by the regulations prescribed under section 504, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

**SEC. 510. EFFECTIVE DATE.**

This subtitle shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3), except—

(1) to the extent that a later date is specified in the rules prescribed under section 504; and

(2) that sections 504 and 506 shall be effective upon enactment.

**Subtitle B—Fraudulent Access to Financial Information****SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

(a) **PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.**—It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) **PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.**—It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) **NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.**—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) **NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.**—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) **NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.**—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) **NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

(g) **NONAPPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.**—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

#### **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

(a) **ENFORCEMENT BY FEDERAL TRADE COMMISSION.**—Except as provided in subsection (b), compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with such Act.

(b) **ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.**—

(1) **IN GENERAL.**—Compliance with this subtitle shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act, in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national non-member banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) **VIOLATIONS OF THIS SUBTITLE TREATED AS VIOLATIONS OF OTHER LAWS.**—For the purpose of

the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subtitle shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subtitle, any other authority conferred on such agency by law.

#### **SEC. 523. CRIMINAL PENALTY.**

(a) **IN GENERAL.**—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) **ENHANCED PENALTY FOR AGGRAVATED CASES.**—Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

#### **SEC. 524. RELATION TO STATE LAWS.**

(a) **IN GENERAL.**—This subtitle shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) **GREATER PROTECTION UNDER STATE LAW.**—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 522 of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

#### **SEC. 525. AGENCY GUIDANCE.**

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

#### **SEC. 526. REPORTS.**

(a) **REPORT TO THE CONGRESS.**—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) **ANNUAL REPORT BY ADMINISTERING AGENCIES.**—The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

#### **SEC. 527. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) **CUSTOMER.**—The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) **CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.**—The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) **DOCUMENT.**—The term “document” means any information in any form.

(4) **FINANCIAL INSTITUTION.**—

(A) **IN GENERAL.**—The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) **CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.**—The term “financial institution” includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Consumer Credit Protection Act).

(C) **SECURITIES INSTITUTIONS.**—For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the same meanings as given in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term “investment adviser” has the same meaning as given in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); and

(iii) the term “investment company” has the same meaning as given in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

(D) **CERTAIN PERSONS AND ENTITIES SPECIFICALLY EXCLUDED.**—The term “financial institution” does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(E) **FURTHER DEFINITION BY REGULATION.**—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

### **TITLE VI—FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION**

#### **SEC. 601. SHORT TITLE.**

This title may be cited as the “Federal Home Loan Bank System Modernization Act of 1999”.

#### **SEC. 602. DEFINITIONS.**

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) in paragraph (1), by striking “term ‘Board’ means” and inserting “terms ‘Finance Board’ and ‘Board’ mean”;

(2) by striking paragraph (3) and inserting the following:

“(3) **STATE.**—The term ‘State’, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the

United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”; and

(3) by adding at the end the following new paragraph:

“(13) COMMUNITY FINANCIAL INSTITUTION.—

“(A) IN GENERAL.—The term ‘community financial institution’ means a member—

“(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

“(ii) that has, as of the date of the transaction at issue, less than \$500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

“(B) ADJUSTMENTS.—The \$500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.”.

#### SEC. 603. SAVINGS ASSOCIATION MEMBERSHIP.

Section 5(f) of the Home Owners’ Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

“(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—After the end of the 6-month period beginning on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.”.

#### SEC. 604. ADVANCES TO MEMBERS; COLLATERAL.

(a) IN GENERAL.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately;

(2) by striking “(a) Each” and inserting the following:

“(a) IN GENERAL.—

“(1) ALL ADVANCES.—Each”;

(3) by striking the second sentence and inserting the following:

“(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

“(A) providing funds to any member for residential housing finance; and

“(B) providing funds to any community financial institution for small businesses, small farms, and small agri-businesses.”;

(4) by striking “A Bank” and inserting the following:

“(3) COLLATERAL.—A Bank”;

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—

(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking “Deposits” and inserting “Cash or deposits”;

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the second sentence; and

(C) by inserting after subparagraph (D) (as so redesignated by paragraph (1) of this subsection) the following new subparagraph:

“(E) Secured loans for small business, agriculture, or securities representing a whole interest in such secured loans, in the case of any community financial institution.”;

(6) in paragraph (5)—

(A) in the second sentence, by striking “and the Board”;

(B) in the third sentence, by striking “Board” and inserting “Federal home loan bank”;

(C) by striking “(5) Paragraphs (1) through (4)” and inserting the following:

“(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3); and (7) by adding at the end the following:

“(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral

standards for any or all of those classes of collateral.

“(6) DEFINITIONS.—For purposes of this subsection, the terms ‘small business’, ‘agriculture’, ‘small farm’, and ‘small agri-business’ shall have the meanings given those terms by regulation of the Finance Board.”.

(b) CLERICAL AMENDMENT.—The section heading for section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

“SEC. 10. ADVANCES TO MEMBERS.”.

(c) QUALIFIED THRIFT LENDER STATUS.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by striking the 1st of the 2 subsections designated as subsection (e).

(d) FEDERAL HOME LOAN BANK ACCESS.—Section 10(m)(3)(B) of the Home Owners’ Loan Act (12 U.S.C. 1467a(m)(3)(B)) is amended—

(1) in clause (i), by striking subclause (III) and redesignating subclause (IV) as subclause (III); and

(2) by striking clause (ii) and inserting the following:

“(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER 3 YEARS.—Beginning 3 years after the date on which a savings association should have become a qualified thrift lender, or the date on which the savings association ceases to be a qualified thrift lender, as applicable, the savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity, unless that investment or activity—

“(I) would be permissible for the savings association if it were a national bank; and

“(II) is permissible for the savings association as a savings association.”.

#### SEC. 605. ELIGIBILITY CRITERIA.

Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) in paragraph (2)(A), by inserting, “(other than a community financial institution)” after “institution”;

(2) in the matter immediately following paragraph (2)(C)—

(A) by striking “An insured” and inserting the following:

“(3) CERTAIN INSTITUTIONS.—An insured”;

and

(B) by striking “preceding sentence” and inserting “paragraph (2)”;

(3) by adding at the end the following new paragraph:

“(4) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).”.

#### SEC. 606. MANAGEMENT OF BANKS.

(a) BOARD OF DIRECTORS.—Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) in subsection (a), by striking “and bona fide residents of the district in which such bank is located” and inserting “, and each of whom shall be either a bona fide resident of the district in which such bank is located or an officer or director of a member of such bank located in that district”;

(2) in subsection (d), by striking the 1st sentence and inserting the following: “The term of each director, whether elected or appointed, shall be 3 years. The board of directors of each Federal home loan bank and the Finance Board shall adjust the terms of members first elected or appointed after the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999 to ensure that the terms of the members of the board of directors are staggered with approximately 1/3 of the terms expiring each year.”; and

(3) by striking subsection (g) and inserting the following:

“(g) CHAIRPERSON AND VICE CHAIRPERSON.—

“(1) ELECTION.—The Chairperson and Vice Chairperson of the board of directors of each Federal home loan bank shall be elected by a majority of all the directors of such bank from among the directors of the bank.

“(2) TERMS.—The term of office of the Chairperson and the Vice Chairperson of the board of directors of a Federal home loan bank shall be 2 years.

“(3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson of the board of directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

“(4) PROCEDURES.—The board of directors of each Federal home loan bank shall establish procedures, in the bylaws of such board, for designating an acting chairperson for any period during which the Chairperson and the Vice Chairperson are not available to carry out the requirements of that position for any reason and removing any person from any such position for good cause.”.

(b) COMPENSATION.—Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended—

(1) by striking “(i) Each bank may pay its directors” and inserting “(i) DIRECTORS’ COMPENSATION.—

“(1) IN GENERAL.—Subject to paragraph (2), each bank may pay its directors”;

(2) by adding at the end the following new paragraph:

“(2) LIMITATION.—

“(A) IN GENERAL.—The annual salary of each of the following members of the board of directors of a Federal home loan bank may not exceed the amount specified:

“In the case of the—                      The annual compensation may not exceed—	
Chairperson .....	\$25,000
Vice Chairperson .....	\$20,000
All other members .....	\$15,000.

“(B) ADJUSTMENT.—Beginning January 1, 2001, each dollar amount referred to in the table in subparagraph (A) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

“(C) EXPENSES.—Subparagraph (A) shall not be construed as prohibiting the reimbursement of expenses incurred by members of the board of directors of any Federal home loan bank in connection with service on the board of directors.”.

(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(d) SECTION 12.—Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended—

(1) in subsection (a)—

(A) by striking “, but, except” and all that follows through “ten years”;

(B) by striking “subject to the approval of the Board” the first place that term appears;

(C) by striking “and, by its Board of directors,” and all that follows through “agent of such bank,” and inserting “and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank”;

(D) by striking “Board of directors” where such term appears in the penultimate sentence and inserting “board of directors”;

(2) in subsection (b), by striking “loans banks” and inserting “loan banks”.

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Section 2B(a) of the Federal Home Loan Bank Act

(12 U.S.C. 1422b(a)) is amended by adding at the end the following new paragraphs:

“(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the Bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice in conducting the business of the bank, or any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency, in accordance with the procedures provided in subsection (c) or (f) of section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to issue an order requiring a party to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a Bank or any executive officer or director of a Bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under subtitle C (other than section 1371) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners’ Loan Act.

“(7) To act in its own name and through its own attorneys—

“(A) in enforcing any provision of this Act or any regulation promulgated under this Act; or

“(B) in any action, suit, or proceeding to which the Finance Board is a party that involves the Board’s regulation or supervision of any Federal home loan bank.”.

(2) **TECHNICAL AMENDMENT.**—Section 111 of Public Law 93-495 (12 U.S.C. 250) is amended by striking “Federal Home Loan Bank Board,” and inserting “Director of the Office of Thrift Supervision, the Federal Housing Finance Board.”.

(f) **ELIGIBILITY TO SECURE ADVANCES.**—

(1) **SECTION 9.**—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the second sentence, by striking “with the approval of the Board”; and

(B) in the third sentence, by striking “, subject to the approval of the Board.”.

(2) **SECTION 10.**—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) in subsection (c)—

(i) in the first sentence, by striking “Board” and inserting “Federal home loan bank”; and

(ii) by striking the second sentence; and

(B) in subsection (d)—

(i) in the first sentence, by striking “and the approval of the Board”; and

(ii) by striking “Subject to the approval of the Board, any” and inserting “Any”.

(g) **SECTION 16.**—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) in the third sentence—

(A) by striking “net earnings” and inserting “previously retained earnings or current net earnings”; and

(B) by striking “, and then only with the approval of the Federal Housing Finance Board”; and

(2) by striking the fourth sentence.

(h) **SECTION 18.**—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

#### **SEC. 607. RESOLUTION FUNDING CORPORATION.**

(a) **IN GENERAL.**—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:

“(C) **PAYMENTS BY FEDERAL HOME LOAN BANKS.**—

“(i) **IN GENERAL.**—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.0 percent of the net earnings of that Bank (after deducting expenses relating to section 10(j) and operating expenses).

“(ii) **ANNUAL DETERMINATION.**—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of \$300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations, in consultation with the Secretary of the Treasury.

“(iii) **PAYMENT TERM ALTERATIONS.**—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of an annuity referred to in clause (ii).

“(iv) **TERM BEYOND MATURITY.**—If the Board extends the term of payment obligations beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.0 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.0 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the Banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall become effective on January 1, 2000. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that Bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act, as amended by this section.

#### **SEC. 608. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:

#### **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

“(a) **REGULATIONS.**—

“(1) **CAPITAL STANDARDS.**—Not later than 1 year after the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

“(A) the leverage requirement specified in paragraph (2); and

“(B) the risk-based capital requirements, in accordance with paragraph (3).

“(2) **LEVERAGE REQUIREMENT.**—

“(A) **IN GENERAL.**—The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the total assets of the bank and shall be 5 percent.

“(B) **TREATMENT OF STOCK AND RETAINED EARNINGS.**—In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock and the amount of retained earnings shall be multiplied by 1.5, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio, except that a Federal home loan bank’s total capital (determined without taking into account any such multiplier) shall not be less than 4 percent of the total assets of the bank.

“(3) **RISK-BASED CAPITAL STANDARDS.**—

“(A) **IN GENERAL.**—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

“(i) the credit risk to which the Federal home loan bank is subject; and

“(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

“(B) **CONSIDERATION OF OTHER RISK-BASED STANDARDS.**—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

“(4) **OTHER REGULATORY REQUIREMENTS.**—The regulations issued by the Finance Board under paragraph (1) shall—

“(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

“(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares; and

“(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares;

“(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

“(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

“(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

“(5) **DEFINITIONS OF CAPITAL.**—For purposes of determining compliance with the capital standards established under this subsection—

“(A) permanent capital of a Federal home loan bank shall include—

“(i) the amounts paid for the Class B stock; and

“(ii) the retained earnings of the bank (as determined in accordance with generally accepted accounting principles); and

“(B) total capital of a Federal home loan bank shall include—

“(i) permanent capital;

“(ii) the amounts paid for the Class A stock;

“(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance



for losses, which may not include any reserves or allowances made or held against specific assets; and

“(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

“(6) **TRANSITION PERIOD.**—Notwithstanding any other provision of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

“(b) **CAPITAL STRUCTURE PLAN.**—

“(1) **APPROVAL OF PLANS.**—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

“(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

“(B) meets the requirements of subsection (c); and

“(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

“(2) **APPROVAL OF MODIFICATIONS.**—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

“(c) **CONTENTS OF PLAN.**—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

“(1) **MINIMUM INVESTMENT.**—

“(A) **IN GENERAL.**—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

“(B) **INVESTMENT ALTERNATIVES.**—

“(i) **IN GENERAL.**—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

“(ii) **AUTHORIZED REQUIREMENTS.**—A requirement is referred to in this clause if it is a requirement for—

“(I) a stock purchase based on a percentage of the total assets of a member; or

“(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

“(C) **MINIMUM AMOUNT.**—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

“(D) **ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.**—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in

compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

“(2) **TRANSITION RULE.**—

“(A) **IN GENERAL.**—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

“(B) **INTERIM PURCHASE REQUIREMENTS.**—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

“(3) **DISPOSITION OF SHARES.**—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

“(4) **CLASSES OF STOCK.**—

“(A) **IN GENERAL.**—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

“(B) **RIGHTS REQUIREMENT.**—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

“(C) **REDUCED MINIMUM INVESTMENT.**—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

“(D) **LIQUIDATION OF CLAIMS.**—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

“(5) **LIMITED TRANSFERABILITY OF STOCK.**—The capital structure plan of a Federal home loan bank shall—

“(A) provide that any stock issued by that bank shall be available only to and held only by members of that bank and tradable only between that bank and its members; and

“(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

“(6) **BANK REVIEW OF PLAN.**—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

“(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

“(B) at least one major credit rating agency, to determine, to the extent possible, whether im-

plementation of the plan would have any material effect on the credit ratings of the bank.

“(d) **TERMINATION OF MEMBERSHIP.**—

“(1) **VOLUNTARY WITHDRAWAL.**—Any member may withdraw from a Federal home loan bank if the member provides written notice to the bank of its intent to do so and if, on the date of withdrawal, there is in effect a certification by the Finance Board that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 21B(f)(2)(C) to contribute to the debt service for the obligations issued by the Resolution Funding Corporation. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

“(2) **INVOLUNTARY WITHDRAWAL.**—

“(A) **IN GENERAL.**—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

“(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

“(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a Federal or State authority with regulatory and supervisory responsibility for the member.

“(B) **STOCK DISPOSITION.**—An institution, the membership of which is terminated in accordance with subparagraph (A)—

“(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

“(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

“(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

“(C) **COMMENCEMENT OF NOTICE PERIOD.**—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

“(i) the date of such termination; or

“(ii) the date on which the member has provided notice of its intent to redeem such stock.

“(3) **LIQUIDATION OF INDEBTEDNESS.**—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

“(e) **REDEMPTION OF EXCESS STOCK.**—

“(1) **IN GENERAL.**—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

“(2) **EXCESS STOCK.**—Shares of stock held by a member shall not be deemed to be ‘excess stock’ for purposes of this subsection by virtue of a member’s submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

“(3) **PRIORITY.**—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

“(f) **IMPAIRMENT OF CAPITAL.**—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

“(g) **REJOINING AFTER DIVESTITURE OF ALL SHARES.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

“(2) **EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.**—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

“(h) **TREATMENT OF RETAINED EARNINGS.**—

“(1) **IN GENERAL.**—The holders of the Class B stock of a Federal home loan bank shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

“(2) **EXCEPTION.**—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

“(3) **LIMITATION.**—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.”.

## TITLE VII—OTHER PROVISIONS

### Subtitle A—ATM Fee Reform

#### SEC. 701. SHORT TITLE.

This subtitle may be cited as the “ATM Fee Reform Act of 1999”.

#### SEC. 702. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following new paragraph:

“(3) **FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.**—

“(A) **IN GENERAL.**—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

“(i) the fact that a fee is imposed by such operator for providing the service; and

“(ii) the amount of any such fee.

“(B) **NOTICE REQUIREMENTS.**—

“(i) **ON THE MACHINE.**—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer.

“(ii) **ON THE SCREEN.**—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrev-

ocably committed to completing the transaction, except that during the period beginning on the date of the enactment of the Gramm-Leach-Bliley Act and ending on December 31, 2004, this clause shall not apply to any automated teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

“(C) **PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.**—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

“(i) the consumer receives such notice in accordance with subparagraph (B); and

“(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

“(D) **DEFINITIONS.**—For purposes of this paragraph, the following definitions shall apply:

“(i) **AUTOMATED TELLER MACHINE OPERATOR.**—The term ‘automated teller machine operator’ means any person who—

“(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

“(II) is not the financial institution that holds the account of such consumer from which the transfer is made.

“(ii) **ELECTRONIC FUND TRANSFER.**—The term ‘electronic fund transfer’ includes a transaction that involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

“(iii) **HOST TRANSFER SERVICES.**—The term ‘host transfer services’ means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.”.

#### SEC. 703. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking “and” at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting “; and”; and

(3) by inserting after paragraph (9) the following new paragraph:

“(10) a notice to the consumer that a fee may be imposed by—

“(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(i)) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and

“(B) any national, regional, or local network utilized to effect the transaction.”.

#### SEC. 704. FEASIBILITY STUDY.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic fund transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee that will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(3)(D)(i) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) **FACTORS TO BE CONSIDERED.**—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

(2) Implementation and operating costs.

(3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.

(4) The period of time that would be reasonable for implementing any such notice requirement.

(5) The extent to which consumers would benefit from any such notice requirement.

(6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.

(c) **REPORT TO THE CONGRESS.**—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and

(2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, the manner in which such requirement should be implemented.

#### SEC. 705. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.

Section 910 of the Electronic Fund Transfer Act (15 U.S.C. 1693h) is amended by adding at the end the following new subsection:

“(d) **EXCEPTION FOR DAMAGED NOTICES.**—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).”.

### Subtitle B—Community Reinvestment

#### SEC. 711. CRA SUNSHINE REQUIREMENTS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 47, as added by section 305 of this Act, the following new section:

#### “SEC. 48. CRA SUNSHINE REQUIREMENTS.

“(a) **PUBLIC DISCLOSURE OF AGREEMENTS.**—Any agreement (as defined in subsection (e)) entered into after the date of the enactment of the Gramm-Leach-Bliley Act by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate—

“(1) shall be in its entirety fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public by each party to the agreement; and

“(2) shall obligate each party to comply with this section.

“(b) **ANNUAL REPORT OF ACTIVITY BY INSURED DEPOSITORY INSTITUTION.**—Each insured depository institution or affiliate that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution, not less frequently than once each year, such information as the Federal banking agency may by rule require relating to the following actions taken by the party pursuant to the agreement during the preceding 12-month period:

“(1) Payments, fees, or loans made to any party to the agreement or received from any

party to the agreement and the terms and conditions of the same.

"(2) Aggregate data on loans, investments, and services provided by each party in its community or communities pursuant to the agreement.

"(3) Such other pertinent matters as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

"(c) ANNUAL REPORT OF ACTIVITY BY NON-GOVERNMENTAL ENTITIES.—

"(1) IN GENERAL.—Each nongovernmental entity or person that is not an affiliate of an insured depository institution and that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to such agreement, not less frequently than once each year, an accounting of the use of funds received pursuant to each such agreement during the preceding 12-month period.

"(2) SUBMISSION TO INSURED DEPOSITORY INSTITUTION.—A nongovernmental entity or person referred to in paragraph (1) may comply with the reporting requirement in such paragraph by transmitting the report to the insured depository institution that is a party to the agreement, and such insured depository institution shall promptly transmit such report to the appropriate Federal banking agency with supervisory authority over the insured depository institution.

"(3) INFORMATION TO BE INCLUDED.—The accounting referred to in paragraph (1) shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

"(d) APPLICABILITY.—Subsections (b) and (c) shall not apply with respect to any agreement entered into before the end of the 6-month period beginning on the date of the enactment of the Gramm-Leach-Bliley Act.

"(e) DEFINITIONS.—

"(1) AGREEMENT.—For purposes of this section, the term 'agreement'—

"(A) means—

"(i) any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration with a value in excess of \$10,000, or for loans the aggregate amount of principal of which exceeds \$50,000, annually (or the sum of all such agreements during a 12-month period with an aggregate value of cash payments, grants, or other consideration in excess of \$10,000, or with an aggregate amount of loan principal in excess of \$50,000); or

"(ii) a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of \$10,000, or with an aggregate amount of loan principal in excess of \$50,000, annually; made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977, at least 1 party to which is an insured depository institution or affiliate thereof, whether organized on a profit or not-for-profit basis; and

"(B) does not include—

"(i) any individual mortgage loan;

"(ii) any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties; or

"(iii) any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with

the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977.

"(2) FULFILLMENT OF CRA.—For purposes of subparagraph (A), the term 'fulfillment' means a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision—

"(A) to approve or disapprove an application for a deposit facility (as defined in section 803 of the Community Reinvestment Act of 1977); or

"(B) to assign a rating to an insured depository institution under section 807 of the Community Reinvestment Act of 1977.

"(f) VIOLATIONS.—

"(1) VIOLATIONS BY PERSONS OTHER THAN INSURED DEPOSITORY INSTITUTIONS OR THEIR AFFILIATES.—

"(A) MATERIAL FAILURE TO COMPLY.—If the party to an agreement described in subsection (a) that is not an insured depository institution or affiliate willfully fails to comply with this section in a material way, as determined by the appropriate Federal banking agency, the agreement shall be unenforceable after the offending party has been given notice and a reasonable period of time to perform or comply.

"(B) DIVERSION OF FUNDS OR RESOURCES.—If funds or resources received under an agreement described in subsection (a) have been diverted contrary to the purposes of the agreement for personal financial gain, the appropriate Federal banking agency with supervisory responsibility over the insured depository institution may impose either or both of the following penalties:

"(i) Disgorgement by the offending individual of funds received under the agreement.

"(ii) Prohibition of the offending individual from being a party to any agreement described in subsection (a) for a period of not to exceed 10 years.

"(2) DESIGNATION OF SUCCESSOR NONGOVERNMENTAL PARTY.—If an agreement described in subsection (a) is found to be unenforceable under this subsection, the appropriate Federal banking agency may assist the insured depository institution in identifying a successor nongovernmental party to assume the responsibilities of the agreement.

"(3) INADVERTENT OR DE MINIMIS REPORTING ERRORS.—An error in a report filed under subsection (c) that is inadvertent or de minimis shall not subject the filing party to any penalty.

"(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a).

"(h) REGULATIONS.—

"(1) IN GENERAL.—Each appropriate Federal banking agency shall prescribe regulations, in accordance with paragraph (4), requiring procedures reasonably designed to ensure and monitor compliance with the requirements of this section.

"(2) PROTECTION OF PARTIES.—In carrying out paragraph (1), each appropriate Federal banking agency shall—

"(A) ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected; and

"(B) establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) to make a single or consolidated filing of a report under subsection (c) to an insured depository institution or an appropriate Federal banking agency.

"(3) PARTIES NOT SUBJECT TO REPORTING REQUIREMENTS.—The Board of Governors of the Federal Reserve System may prescribe regulations—

"(A) to prevent evasions of subsection (e)(1)(B)(iii); and

"(B) to provide further exemptions under such subsection, consistent with the purposes of this section.

"(4) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In carrying out paragraph (1), each appropriate Federal banking agency shall consult and coordinate with the other such agencies for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies."

#### SEC. 712. SMALL BANK REGULATORY RELIEF.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

#### "SEC. 809. SMALL BANK REGULATORY RELIEF.

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), any regulated financial institution with aggregate assets of not more than \$250,000,000 shall be subject to routine examination under this title—

"(1) not more than once every 60 months for an institution that has achieved a rating of 'outstanding record of meeting community credit needs' at its most recent examination under section 804;

"(2) not more than once every 48 months for an institution that has received a rating of 'satisfactory record of meeting community credit needs' at its most recent examination under section 804; and

"(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than 'satisfactory record of meeting community credit needs' at its most recent examination under section 804.

"(b) NO EXCEPTION FROM CRA EXAMINATIONS IN CONNECTION WITH APPLICATIONS FOR DEPOSIT FACILITIES.—A regulated financial institution described in subsection (a) shall remain subject to examination under this title in connection with an application for a deposit facility.

"(c) DISCRETION.—A regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency."

#### SEC. 713. FEDERAL RESERVE BOARD STUDY OF CRA LENDING.

The Board of Governors of the Federal Reserve System shall conduct a comprehensive study, in consultation with the Chairman and Ranking Member of the Committee on Banking and Financial Services of the House of Representatives and the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate, of the Community Reinvestment Act of 1977, which shall focus on—

- (1) the default rates;
- (2) the delinquency rates; and
- (3) the profitability;

of loans made in conformity with such Act, and report on the study to such Committees not later than March 15, 2000. Such report and supporting data shall also be made available by the Board of Governors of the Federal Reserve System to the public.

#### SEC. 714. PRESERVING THE COMMUNITY REINVESTMENT ACT OF 1977.

Nothing in this Act shall be construed to repeal any provision of the Community Reinvestment Act of 1977.

#### SEC. 715. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.

(b) REPORTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall—

(A) before March 15, 2000, submit a baseline report to the Congress on the study conducted pursuant to subsection (a); and

(B) before the end of the 2-year period beginning on the date of the enactment of this Act, in consultation with the Federal banking agencies, submit a final report to the Congress on the study conducted pursuant to subsection (a).

(2) RECOMMENDATIONS.—The final report submitted under paragraph (1)(B) shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977.

#### **Subtitle C—Other Regulatory Improvements**

#### **SEC. 721. EXPANDED SMALL BANK ACCESS TO S CORPORATION TREATMENT.**

(a) STUDY.—The Comptroller General of the United States shall conduct a study of—

(1) possible revisions to the rules governing S corporations, including—

(A) increasing the permissible number of shareholders in such corporations;

(B) permitting shares of such corporations to be held in individual retirement accounts;

(C) clarifying that interest on investments held for safety, soundness, and liquidity purposes should not be considered to be passive income;

(D) discontinuation of the treatment of stock held by bank directors as a disqualifying personal class of stock for such corporations; and

(E) improving Federal tax treatment of bad debt and interest deductions; and

(2) what impact such revisions might have on community banks.

(b) REPORT TO THE CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress on the results of the study conducted under subsection (a).

(c) DEFINITION.—For purposes of this section, the term “S corporation” has the meaning given the term in section 1361(a)(1) of the Internal Revenue Code of 1986.

#### **SEC. 722. “PLAIN LANGUAGE” REQUIREMENT FOR FEDERAL BANKING AGENCY RULES.**

(a) IN GENERAL.—Each Federal banking agency shall use plain language in all proposed and final rulemakings published by the agency in the Federal Register after January 1, 2000.

(b) REPORT.—Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a).

(c) DEFINITION.—For purposes of this section, the term “Federal banking agency” has the meaning given that term in section 3 of the Federal Deposit Insurance Act.

#### **SEC. 723. RETENTION OF “FEDERAL” IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.**

Section 2 of the Act entitled “An Act to enable national banking associations to increase their capital stock and to change their names or locations”, approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

“(d) RETENTION OF ‘FEDERAL’ IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

“(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution, the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Gramm-Leach-Bliley Act may retain the term ‘Federal’ in the name of such institution if such institution remains an insured depository institution.

“(2) DEFINITIONS.—For purposes of this subsection, the terms ‘depository institution’, ‘insured depository institution’, ‘national bank’, and ‘State bank’ have the meanings given those

terms in section 3 of the Federal Deposit Insurance Act.”.

#### **SEC. 724. CONTROL OF BANKERS’ BANKS.**

Section 2(a)(5)(E)(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E)(i)) is amended by inserting “1 or more” before “thrift institutions”.

#### **SEC. 725. PROVISION OF TECHNICAL ASSISTANCE TO MICROENTERPRISES.**

Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following new subtitle:

#### **“Subtitle C—Microenterprise Technical Assistance and Capacity Building Program**

##### **“SEC. 171. SHORT TITLE.**

“This subtitle may be cited as the ‘Program for Investment in Microentrepreneurs Act of 1999’, also referred to as the ‘PRIME Act’.

##### **“SEC. 172. DEFINITIONS.**

“For purposes of this subtitle, the following definitions shall apply:

“(1) ADMINISTRATION.—The term ‘Administration’ means the Small Business Administration.

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Small Business Administration.

“(3) CAPACITY BUILDING SERVICES.—The term ‘capacity building services’ means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

“(4) COLLABORATIVE.—The term ‘collaborative’ means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this subtitle.

“(5) DISADVANTAGED ENTREPRENEUR.—The term ‘disadvantaged entrepreneur’ means a microentrepreneur that is—

“(A) a low-income person;

“(B) a very low-income person; or

“(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

“(6) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 103.

“(7) INTERMEDIARY.—The term ‘intermediary’ means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 175.

“(8) LOW-INCOME PERSON.—The term ‘low-income person’ has the meaning given the term in section 103.

“(9) MICROENTREPRENEUR.—The term ‘microentrepreneur’ means the owner or developer of a microenterprise.

“(10) MICROENTERPRISE.—The term ‘microenterprise’ means a sole proprietorship, partnership, or corporation that—

“(A) has fewer than 5 employees; and

“(B) generally lacks access to conventional loans, equity, or other banking services.

“(11) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM.—The term ‘microenterprise development organization or program’ means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.

“(12) TRAINING AND TECHNICAL ASSISTANCE.—The term ‘training and technical assistance’ means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

“(13) VERY LOW-INCOME PERSON.—The term ‘very low-income person’ means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in

section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section).

##### **“SEC. 173. ESTABLISHMENT OF PROGRAM.**

“The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Administration in the form of grants to qualified organizations in accordance with this subtitle.

##### **“SEC. 174. USES OF ASSISTANCE.**

“A qualified organization shall use grants made under this subtitle—

“(1) to provide training and technical assistance to disadvantaged entrepreneurs;

“(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

“(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

“(4) for such other activities as the Administrator determines are consistent with the purposes of this subtitle.

##### **“SEC. 175. QUALIFIED ORGANIZATIONS.**

“For purposes of eligibility for assistance under this subtitle, a qualified organization shall be—

“(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

“(2) an intermediary;

“(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

“(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

##### **“SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.**

“(a) ALLOCATION OF ASSISTANCE.—

“(1) IN GENERAL.—The Administrator shall allocate assistance from the Administration under this subtitle to ensure that—

“(A) activities described in section 174(1) are funded using not less than 75 percent of amounts made available for such assistance; and

“(B) activities described in section 174(2) are funded using not less than 15 percent of amounts made available for such assistance.

“(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may receive more than 10 percent of the total funds appropriated under this subtitle in a single fiscal year.

“(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under this subtitle are used to benefit very low-income persons, including those residing on Indian reservations.

“(c) SUBGRANTS AUTHORIZED.—

“(1) IN GENERAL.—A qualified organization receiving assistance under this subtitle may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

“(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this subtitle may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

“(d) DIVERSITY.—In making grants under this subtitle, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities serving diverse populations.

“(e) PROHIBITION ON PREFERENTIAL CONSIDERATION OF CERTAIN SBA PROGRAM PARTICIPANTS.—In making grants under this subtitle, the Administrator shall ensure that any application made by a qualified organization that is a participant in the program established under section 7(m) of the Small Business Act does not receive preferential consideration over applications from other qualified organizations that are not participants in such program.

**“SEC. 177. MATCHING REQUIREMENTS.**

“(a) IN GENERAL.—Financial assistance under this subtitle shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Administration.

“(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in subsection (a).

“(c) EXCEPTION.—

“(1) IN GENERAL.—In the case of an applicant for assistance under this subtitle with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a).

“(2) LIMITATION.—Not more than 10 percent of the total funds made available from the Administration in any fiscal year to carry out this subtitle may be excepted from the matching requirements of subsection (a), as authorized by paragraph (1) of this subsection.

**“SEC. 178. APPLICATIONS FOR ASSISTANCE.**

“An application for assistance under this subtitle shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

**“SEC. 179. RECORDKEEPING.**

“The requirements of section 115 shall apply to a qualified organization receiving assistance from the Administration under this subtitle as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

**“SEC. 180. AUTHORIZATION.**

“In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title, there are authorized to be appropriated to the Administrator to carry out this subtitle—

“(1) \$15,000,000 for fiscal year 2000;

“(2) \$15,000,000 for fiscal year 2001;

“(3) \$15,000,000 for fiscal year 2002; and

“(4) \$15,000,000 for fiscal year 2003.

**“SEC. 181. IMPLEMENTATION.**

“The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this subtitle.”

**SEC. 726. FEDERAL RESERVE AUDITS.**

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 11A the following new section:

**“SEC. 11B. ANNUAL INDEPENDENT AUDITS OF FEDERAL RESERVE BANKS AND BOARD.**

“The Board shall order an annual independent audit of the financial statements of each Federal reserve bank and the Board.”

**SEC. 727. AUTHORIZATION TO RELEASE REPORTS.**

(a) FEDERAL RESERVE ACT.—The eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended by striking the last sentence and inserting the following: “The Board of Governors of the Federal Reserve System, at its discretion, may furnish any report of examination or other confidential supervisory information concerning any State member bank or other entity examined under any other authority of the Board, to any Federal or State agency or authority with supervisory or regulatory authority over the examined entity, to any officer, director, or receiver of the examined entity, and to any other person that the Board determines to be proper.”

(b) COMMODITY FUTURES TRADING COMMISSION.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(7)—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting after subparagraph (F) the following new subparagraph:

“(G) the Commodity Futures Trading Commission”; and

(2) in section 1112(e), by striking “and the Securities and Exchange Commission” and inserting “, the Securities and Exchange Commission, and the Commodity Futures Trading Commission”.

**SEC. 728. GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST.**

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

(b) SPECIFIC CONFLICT REQUIRED TO BE ADDRESSED.—In the course of the study required under subsection (a), the Comptroller General shall address the conflict of interest faced by the Board of Governors of the Federal Reserve System between the role of the Board as a regulator of the payment system, generally, and its participation in the payment system as a competitor with private entities who are providing payment services.

(c) REPORT TO THE CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study required under this section, together with such recommendations for such legislative or administrative actions as the Comptroller General may determine to be appropriate, including recommendations for resolving any such conflict of interest.

**SEC. 729. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.**

(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) DEFINITION.—For purposes of this section, the term “Federal banking agencies” means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

**SEC. 730. CLARIFICATION OF SOURCE OF STRENGTH DOCTRINE.**

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

“(t) LIMITATION ON CLAIMS.—

“(1) IN GENERAL.—No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection

with such transfer, if at the time of the transfer—

“(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

“(B) the insured depository institution is undercapitalized (as defined in section 38 of this Act); and

“(C) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

“(2) DEFINITION OF CLAIM.—For purposes of paragraph (1), the term ‘claim’—

“(A) means a cause of action based on Federal or State law that—

“(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

“(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

“(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.”

**SEC. 731. INTEREST RATES AND OTHER CHARGES AT INTERSTATE BRANCHES.**

Section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

“(f) APPLICABLE RATE AND OTHER CHARGE LIMITATIONS.—

“(1) IN GENERAL.—In the case of any State that has a constitutional provision that sets a maximum lawful annual percentage rate of interest on any contract at not more than 5 percent above the discount rate for 90-day commercial paper in effect at the Federal reserve bank for the Federal reserve district in which such State is located, except as provided in paragraph (2), upon the establishment in such State of a branch of any out-of-State insured depository institution in such State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by any insured depository institution whose home State is such State shall be equal to not more than the greater of—

“(A) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution, statutory, or other laws of the home State of the out-of-State insured depository institution establishing any such branch, without reference to this section, as such maximum interest rate or amount of interest may change from time to time; or

“(B) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by a State insured depository institution chartered under the laws of such State or a national bank or Federal savings association whose main office is located in such State without reference to this section.

“(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as superseding or affecting—

“(A) the authority of any insured depository institution to take, receive, reserve, and charge interest on any loan made in any State other than the State referred to in paragraph (1); or

“(B) the applicability of section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, section 5197 of the Revised Statutes of the United States, or section 27 of this Act.”

**SEC. 732. INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS.**

Section 5(a)(7) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(7)) is amended to read as follows:

“(7) ADDITIONAL AUTHORITY FOR INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS, UPGRADES OF CERTAIN FOREIGN BANK AGENCIES AND BRANCHES.—Notwithstanding paragraphs (1) and (2), a foreign bank may—

“(A) with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank’s home State if—

“(i) the establishment and operation of such branch or agency is permitted by the State in which the branch or agency is to be established; and

“(ii) in the case of a Federal or State branch, the branch receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act; or

“(B) with the approval of the Board and the relevant licensing authority (the Comptroller in the case of a Federal branch or the appropriate State supervisor in the case of a State branch), upgrade an agency, or a branch of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank’s home State, into a Federal or State branch if—

“(i) the establishment and operation of such branch is permitted by such State; and

“(ii) such agency or branch—

“(I) was in operation in such State on the day before September 29, 1994; or

“(II) has been in operation in such State for a period of time that meets the State’s minimum age requirement permitted under section 44(a)(5) of the Federal Deposit Insurance Act.”.

**SEC. 733. FAIR TREATMENT OF WOMEN BY FINANCIAL ADVISERS.**

It is the sense of the Congress that individuals offering financial advice and products should offer such services and products in a non-discriminatory, nongender-specific manner.

**SEC. 734. MEMBERSHIP OF LOAN GUARANTEE BOARDS.**

(a) EMERGENCY STEEL LOAN GUARANTEE BOARD.—Section 101(e) of the Emergency Steel Loan Guarantee Act of 1999 is amended—

(1) in paragraph (2), by inserting “, or a member of the Board of Governors of the Federal Reserve System designated by the Chairman” after “the Chairman of the Board of Governors of the Federal Reserve System”; and

(2) in paragraph (3), by inserting “, or a commissioner of the Securities and Exchange Commission designated by the Chairman” before the period.

(b) EMERGENCY OIL AND GAS LOAN GUARANTEE BOARD.—Section 201(d)(2) of the Emergency Oil and Gas Guarantee Loan Program Act is amended—

(1) in subparagraph (B), by inserting “, or a member of the Board of Governors of the Federal Reserve System designated by the Chairman” after “the Chairman of the Board of Governors of the Federal Reserve System”; and

(2) in subparagraph (C), by inserting “, or a commissioner of the Securities and Exchange Commission designated by the Chairman” before the period.

**SEC. 735. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.**

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as “(m)” and inserting “(m) [Repealed]”.

**SEC. 736. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES.**

(a) SAIF SPECIAL RESERVE.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) DIF SPECIAL RESERVE.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking “(6) and (7)” and inserting “(5), (6), and (7)”; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following:

“(ii) by redesignating paragraph (8) as paragraph (5).”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the date of the enactment of this Act.

**SEC. 737. BANK OFFICERS AND DIRECTORS AS OFFICERS AND DIRECTORS OF PUBLIC UTILITIES.**

Section 305(b) of the Federal Power Act (16 U.S.C. 825d(b)) is amended—

(1) by striking “(b) After six” and inserting the following:

“(b) INTERLOCKING DIRECTORATES.—

“(1) IN GENERAL.—After 6”; and

(2) by adding at the end the following:

“(2) APPLICABILITY.—

“(A) IN GENERAL.—In the circumstances described in subparagraph (B), paragraph (1) shall not apply to a person that holds or proposes to hold the positions of—

“(i) officer or director of a public utility; and

“(ii) officer or director of a bank, trust company, banking association, or firm authorized by law to underwrite or participate in the marketing of securities of a public utility.

“(B) CIRCUMSTANCES.—The circumstances described in this subparagraph are that—

“(i) a person described in subparagraph (A) does not participate in any deliberations or decisions of the public utility regarding the selection of a bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if the person serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

“(ii) the bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

“(iii) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

“(iv) the issuance of securities the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.”.

**SEC. 738. APPROVAL FOR PURCHASES OF SECURITIES.**

Section 23B(b)(2) of the Federal Reserve Act (12 U.S.C. 371c-1) is amended to read as follows:

“Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.”.

**SEC. 739. OPTIONAL CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS.**

Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

“(5) CONVERSION TO NATIONAL OR STATE BANK.—

“(A) IN GENERAL.—Any Federal savings association chartered and in operation before the date of the enactment of the Gramm-Leach-Bliley Act, with branches in operation before such

date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State bank supervisor, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.

“(B) DEFINITIONS.—For purposes of this paragraph, the terms ‘State bank’ and ‘State bank supervisor’ have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.”.

**SEC. 740. GRAND JURY PROCEEDINGS.**

Section 3322(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting “Federal or State” before “financial institution”; and

(2) in paragraph (2), by inserting “at any time during or after the completion of the investigation of the grand jury,” before “upon”.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

From the Committee on Banking and Financial Services, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JAMES A. LEACH,  
BILL MCCOLLUM,  
MARGE ROUKEMA,  
DOUG BEREUTER,  
RICK LAZIO,  
SPENCER BACHUS,  
MICHAEL N. CASTLE,  
JOHN J. LAFALCE,  
BRUCE F. VENTO,

As additional conferees from the Committee on Banking and Financial Services, for consideration of titles I, III (except section 304), IV, and VII of the Senate bill, and title I of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title V of the Senate bill, and title II of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,  
JAMES H. MALONEY,

As additional conferees from the Committee on Banking and Financial Service, for consideration of title II of the Senate bill, and title III of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,  
NYDIA M. VELÁZQUEZ,  
DARLENE HOOLEY,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title VI of the Senate bill, and title IV of the House amendment, and modifications committed to conference:

CAROL B. MALONEY,  
LUIS V. GUTIERREZ,  
KEN BENTSEN,

As additional conferees from the Committee on Banking and Financial Services, for consideration of section 304 of the Senate bill, and title V of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
GARY L. ACKERMAN,

From the Committee on Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

TOM BLILEY,  
MICHAEL G. OXLEY,  
BILLY TAUZIN,



PAUL GILLMOR,  
JAMES GREENWOOD,  
CHRIS COX,  
STEVE LARGENT,  
BRIAN BILBRAY  
E. TOWNS,  
DIANA DEGETTE,  
LOIS CAPPs,

Provided that Mr. Rush is appointed in lieu of Mrs. Capps for consideration of section 316 of the Senate bill:

BOBBY L. RUSH,

From the Committee on Agriculture, for consideration of title V of the House amendment, and modifications committed to conference:

LARRY COMBEST,  
THOMAS W. EWING,  
CHARLES W. STENHOLM,

From the Committee on the Judiciary, for consideration of sections 104(a), 104(d)(3), and 104(f)(2) of the Senate bill, and sections 104(a)(3), 104(b)(3)(A), 104(b)(4)(B), 136(b), 136(d)-(e), 141-44, 197, 301, and 306 of the House amendment, and modifications committed to conference:

HENRY HYDE,  
GEORGE W. GEKAS,

From the Committee on Banking and Financial Services, for consideration of section 101 of the Senate bill and section 101 of the House amendment: Mr. King is appointed in lieu of Mr. Bachus; Mr. Royce is appointed in lieu of Mr. Castle:

PETER T. KING,  
ED ROYCE,

From the Committee on Commerce, for consideration of section 101 of the Senate bill and section 101 of the House amendment: Mrs. Wilson is appointed in lieu of Mr. Largent; Mr. Fossella is appointed in lieu of Mr. Bilbray:

HEATHER WILSON,  
VITO FOSSELLA,

*Managers on the Part of the House.*

PHIL GRAMM,  
CONNIE MACK,  
ROBERT F. BENNETT,  
ROD GRAMS,  
WAYNE ALLARDS,  
MICHAEL B. ENZI,  
CHUCK HAGEL,  
RICK SANTORUM  
JIM BUNNING,  
MIKE CRAPO  
PAUL SARBANES,  
CHRISTOPHER J. DODD,  
JOHN F. KERRY,  
TIM JOHNSON,  
JACK REED,  
CHARLES, SCHUMER,  
EVAN BAYH  
JOHN EDWARDS,

*Managers on the Part of the Senate.*

#### JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 900), to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the house amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

#### TITLE I—FACILITATING AFFILIATIONS AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES

The legislation approved by the Conference Managers eliminates many Federal and State law barriers to affiliations among banks and securities firms, insurance companies, and other financial service providers. The House and Senate bills established an identical statutory framework (except for minor drafting differences) pursuant to which full affiliations can occur between banks and securities firms, insurance companies, and other financial companies. The Conferees adopted this framework. Furthermore, the legislation provides financial organizations with flexibility in structuring these new financial affiliations through a holding company structure, or a financial subsidiary (with certain prudential limitations on activities and appropriate safeguards). Reflected in the legislation is the determination made by both Houses to preserve the role of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board" or the "Board") as the umbrella supervisor for holding companies, but to incorporate a system of functional regulation designed to utilize the strengths of the various Federal and State financial supervisors. Incorporating provisions found in both the House and Senate bills, the legislation establishes a mechanism for coordination between the Federal Reserve Board and the Secretary of the Treasury ("the Secretary") regarding the approval of new financial activities for both holding companies and national bank financial subsidiaries. The legislation enhances safety and soundness and improves access to financial services by requiring that banks may not participate in the new financial affiliations unless the banks are well capitalized and well managed. The appropriate regulators are given clear authority to address any failure to maintain these safety and soundness standards in a prompt manner. The legislation also requires that Federal bank regulators prohibit banks from participating in the new financial affiliations if, at the time of certification, any bank affiliate had received a less than "satisfactory" Community Reinvestment Act of 1977 ("CRA") rating as of its most recent examination.

#### Subtitle A—Financial Affiliations

*Senate Position:* The Senate bill contains provisions repealing restrictions in the Glass-Steagall Act and the Bank Holding Company Act of 1956 ("BHCA") on affiliations involving securities firms and insurance companies, respectively. The Senate bill establishes a new framework in section 4 of the BHCA for bank holding companies to engage in financial activities. It does not create a separate designation for bank holding companies engaged in the new financial activities but it does require that the subsidiary insured depository institutions of such holding companies be well capitalized and well managed in order to take advantage of the new activities. In the event that a bank holding company's subsidiary depository institutions fall out of compliance, a "cure" procedure is established. The Senate bill authorizes bank holding companies to engage in activities that the Federal Reserve Board has determined to be financial in nature and incidental to such financial activities. It also authorizes qualifying bank holding companies to engage in activities that

the Federal Reserve Board determines are complementary to financial activities, or any other service that the Federal Reserve Board determines not to pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. It contains a list of pre-approved activities that includes merchant banking and insurance company portfolio investment activities. There is also a grandfather provision for the commodities activities engaged in by a company as of September 30, 1997, if that company becomes a bank holding company after the date of enactment.

*House Position:* The House bill also repeals the restrictions contained in the Glass-Steagall Act on affiliations between banks and securities firms engaged in underwriting and in the BHCA on affiliations between banks and insurance companies and insurance agents. It creates a new section 6 of the BHCA which authorizes new financial activities for bank holding companies that qualify as "financial holding companies." In order for a bank holding company to qualify as a financial holding company ("FHC"), its subsidiary depository institutions must be well managed, well capitalized, and have received at least a "satisfactory" CRA rating as of their last examination. In the event that an FHC falls out of compliance, a "cure" procedure is established. It authorizes FHCs to engage in activities that the Federal Reserve Board has determined to be financial in nature, incidental to such financial activities or complementary to financial activities to the extent that the amount of such complementary activities remains small. It contains a list of pre-approved activities that includes investment banking and insurance company portfolio investment activities. The House bill also authorizes FHCs to engage in developing activities to a limited extent. A ten-year grandfather is included for the nonfinancial activities of companies that become bank holding companies after enactment of this legislation and are predominantly financial in nature at the time they become FHCs.

*Conference Substitute:* The Conferees acceded to the Senate by agreeing to amend section 4 of the BHCA to add a series of new subsections that contain the framework for engaging in new financial activities. The Conferees have acceded to the House in designating as FHCs those bank holding companies qualifying to engage in the new financial activities.

New section 4(k) permits bank holding companies that qualify as FHCs to engage in activities, and acquire companies engaged in activities, that are financial in nature or incidental to such financial activities. FHCs are also permitted to engage in activities that are complementary to financial activities if the Federal Reserve Board determines that the activity does not pose a substantial risk to the safety or soundness of depository institutions or the financial system in general.

Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking. The Board has primary jurisdiction for determining what activities are financial in nature, incidental to financial in nature, or complementary. The Board may act by regulation or order. In determining what activities are financial in nature or incidental, the Federal Reserve Board must notify the Secretary of applications or requests to engage in new financial activities. The Federal Reserve Board may not determine that an activity is financial or incidental to a financial activity if the Secretary objects. The Secretary may also propose to the Federal Reserve Board that the Board find that

a particular activity is financial in nature or incidental to a financial activity. A similar procedure is included in the legislation with regard to the determination of financial activities and activities that are incidental to financial activities for financial subsidiaries of national banks. The intent of the Conferees is that the Federal Reserve Board and the Secretary of the Treasury will establish a consultative process that will negate the need for either agency to veto a proposal of the other agency. Establishing such a process should bring balance to the determinations regarding the type of activities that are financial and limit regulatory arbitrage.

Section 4(k) contains a list of activities that are considered to be financial in nature. An FHC may engage in the activities on this list without obtaining prior approval from the Federal Reserve Board. Notice must be given to the Federal Reserve Board not later than 30 days after the activity is commenced or a company is acquired. The list includes securities underwriting, dealing, and market making without any revenue limitation such as sponsoring and distributing all types of mutual funds and investment companies. Other activities include insurance underwriting and agency activities, merchant banking, and insurance company portfolio investments. The reference to "... insuring, guaranteeing or indemnifying against ... illness," is meant to include activities commonly thought of as health insurance, including such activities when provided by companies such as Blue Cross and Blue Shield organizations which are licensed under State laws to provide health insurance benefits in consideration of the payment of premiums or subscriber contributions. Such reference is not meant to include the activity of directly providing health care on a basis other than to the extent that it may be incidental to the business of insurance as defined in section 4(k)(4)(B) of the BHCA.

#### *Merchant banking*

The authorization of merchant banking activities as provided in new section 4(k)(4)(H) of the BHCA is designed to recognize the essential role that these activities play in modern finance and permits an FHC that has a securities affiliate or an affiliate of an insurance company engaged in underwriting life, accident and health, or property and casualty insurance, or providing and issuing annuities, to conduct such activities. Under this provision, the FHC may directly or indirectly acquire or control any kind of ownership interest (including debt and equity securities, partnership interests, trust certificates, or other instruments representing ownership) in an entity engaged in any kind of trade or business whatsoever. The FHC may make such acquisition whether acting as principal, on behalf of one or more entities (e.g., as adviser to a fund, regardless of whether the FHC is also an investor in the fund), including entities that the FHC controls (other than a depository institution or a subsidiary of a depository institution), or otherwise.

Section 122 provides that after a 5 year period from the date of enactment, the Board and the Secretary may jointly adopt rules permitting financial subsidiaries to engage in the activities under section 4(k)(4)(H) of the BHCA subject to the conditions that the agencies may jointly determine.

#### *Insurance company portfolio investments*

New section 4(k)(4)(I) of the BHCA recognizes that as part of the ordinary course of business, insurance companies frequently invest funds received from policyholders by acquiring most or all the shares of stock of a company that may not be engaged in a financial activity. These investments are made in the ordinary course of business pursuant to

state insurance laws governing investments by insurance companies, and are subject to ongoing review and approval by the applicable state regulator. Section 4(k)(4)(I) permits an insurance company that is affiliated with a depository institution to continue to directly or indirectly acquire or control any kind of ownership interest in any company if certain requirements are met. The shares held by such a company: (i) must not be acquired or held by a depository institution or a subsidiary of a depository institution; (ii) must be acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty (other than credit-related insurance) or in providing and issuing annuities; and (iii) must represent an investment made in the ordinary course of business of such insurance company in accordance with relevant state law governing such investments. In addition, during the period such ownership interests are held, the FHC must not routinely manage or operate the portfolio company except as may be necessary or required to obtain a reasonable return on the investment. To the extent an FHC participates in the management or operation of a portfolio company, such participation would ordinarily be for the purpose of safeguarding the investment of the insurance company in accordance with the applicable requirements of state insurance law. This is irrespective of any overlap between board members and officers of the FHC and the portfolio company.

#### CONDITIONS TO ENGAGE IN NEW ACTIVITIES

New section 4(l) of the BHCA establishes the requirements for permitting a bank holding company to engage in the new financial activities and affiliations. A bank holding company may elect to become a financial holding company if all of its subsidiary banks are well capitalized and well managed. A bank holding company that meets such requirements may file a certification to that effect with the Board and a declaration that the company chooses to be an FHC.

After the filing of such a declaration and certification, an FHC may engage either de novo, or through an acquisition, in any activity that has been determined by the Board to be financial in nature or incidental to such financial activity. FHCs may engage in activities on the preapproved list of financial activities contained in section 4(k) of the BHCA and any other financial activity approved by the Board without prior notice. Complementary activities, however, must be approved by the Board on a case-by-case basis under the notice procedures contained in section 4(j) of the BHCA.

The legislation also amends the CRA to provide that an election of a bank holding company to become an FHC shall not be effective if the Board finds that as of the date of the election not all of the subsidiary insured depository institutions of the holding company had received a "satisfactory" or better CRA rating at their most recent CRA examinations. In addition, the legislation amends the BHCA to require the appropriate Federal banking agency to prohibit an FHC, or a bank through a financial subsidiary, from commencing any new activities or acquiring any companies under sections 4(k) or (n) of the BHCA, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act, in the event that the bank or any of its insured depository institution affiliates or any insured depository institution affiliate of the FHC fails to have at least a "satisfactory" CRA rating at the time of its last examination. It is the most recent rating alone that shall be looked to by the regulator in connection with these provisions. This provi-

sion does not authorize any agency to require the divestiture of any company already owned by the FHC prior to the time that the prohibition becomes effective or to limit in any way any activity already engaged in by the FHC prior to that time. The prohibition ceases to apply once all of the insured depository institutions controlled by the FHC or the bank and all of its insured depository institution affiliates have restored their CRA performance rating to at least the "satisfactory" level.

This provision applies to the ownership and activities of financial subsidiaries of national banks to the same extent as it applies to FHCs. It also applies in the same way to subsidiaries held by insured State banks subject to newly added section 46(a) of the Federal Deposit Insurance Act.

#### OPERATION OF STATE LAW

*Senate Position:* The Senate bill establishes in section 104 the parameters for the appropriate balance between Federal and State regulation of the activities and affiliations allowed under this legislation.

*House Position:* The House provision is similar, with parallel provisions contained in sections 104, 301, and 302 of the House bill.

*Conference Substitute:* The House agreed to incorporate its sections 301 and 302 into section 104, and the Senate agreed to adopt the language of the House's section 302. The House discrimination standard was adopted with modifications, and the Conferees agreed to incorporate House provisions protecting the ability of the States to require restoration of an entity's capital, and restricting changes in stock ownership of demutualizing insurers, as modified. The House receded on its provision specifically addressing a North Carolina Blue-Cross Blue-Shield organization, as the State laws governing those types of entities would not be preempted so long as the State laws do not discriminate, as set forth in the legislation.

This section reaffirms the McCarran-Ferguson Act, recognizing the primacy and legal authority of the States to regulate insurance activities of all persons. No persons are permitted to engage in the business of insurance unless they are licensed by the States, as required under State law. States are not allowed to prevent certain affiliations or activities or discriminate against depository institutions in providing such insurance licenses.

In general, States are not allowed to prevent or restrict affiliations permitted under Federal law. With respect to an affiliation by an insurer, States may collect information, and the insurer's State of domicile may take action on the affiliation (including approval or disapproval), but only within 60 days of receiving notice of the affiliation, and only if the actions do not discriminate against the insurer based on an association with a depository institution. An affiliating insurer's State of domicile may require capital restoration to the level required under State law, so long as such request is made within 60 days of notice of the affiliation. Any State, as permitted under State law, may restrict changes in ownership of a demutualizing insurer so long as the restrictions are not discriminatory as set forth in the legislation. Section 104(c)(2)(C) means that State laws and State regulators shall not discriminate against depository institutions or their affiliates with respect to acquiring or otherwise changing the ownership of stock in newly demutualized insurance companies relative to other persons.

Except with respect to insurance, States may not prevent or restrict a depository institution or affiliate thereof from engaging in any activity set forth under the Gramm-Leach-Bliley Act. With respect to insurance

sales, solicitations, and cross-marketing, States may not prevent or significantly interfere with the activities of depository institutions or their affiliates, as set forth in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996). However, State restrictions that are substantially the same as but no more burdensome than the thirteen general safe harbors provided are not subject to potential preemption. States are also allowed to continue the regulation of insurance activities other than sales, solicitation, and cross-marketing, and the preemption standard does not apply to such regulation if consistent with the standards set forth in the legislation.

State regulation other than of insurance or securities activities is not preempted even if it does prevent or restrict an activity so long as it does not discriminate. The Conferees adopted the House discrimination standard with respect to insurance activities. The discrimination standard does not apply to State regulations governing insurance sales, solicitations, or cross-marketing activities adopted before September 3, 1998, and does not apply to State regulations that are substantially the same as but no more burdensome than the safe harbors. State securities regulation is not preempted by the "prevent or restrict" standard with regard to a State securities commission's ability to investigate and enforce certain unlawful securities transactions or to require the licensure or registration of securities and securities brokers, dealers, and investment advisors and their associates. State actions of general corporate applicability applying to companies domiciled or incorporated in the State are also protected from the "prevent or restrict" preemption, as well as State laws similar to the antitrust laws, so long as the State actions are not inconsistent with the intent of this Act to permit affiliations. The term "depository institution" is defined as including foreign banks and their domestic affiliates and subsidiaries. The term "affiliate" is defined for section 104 to include any person under common control (including a subsidiary).

#### Subtitle B—Streamlining Supervision of Bank Holding Companies

Both the House and Senate bills generally adhere to the principle of functional regulation, which holds that similar activities should be regulated by the same regulator. Different regulators have expertise at supervising different activities. It is inefficient and impractical to expect a regulator to have or develop expertise in regulating all aspects of financial services. Accordingly, the legislation intends to ensure that banking activities are regulated by bank regulators, securities activities are regulated by securities regulators, and insurance activities are regulated by insurance regulators.

In keeping with the Board's role as an umbrella supervisor, the legislation provides that the Board may require any bank holding company or subsidiary thereof to submit reports regarding its financial condition, systems for monitoring and controlling financial and operating risks, transactions with depository institutions, and compliance with the BHCA or other Federal laws that the Board has specific jurisdiction to enforce. The Board is directed to use existing examination reports prepared by other regulators, publicly reported information, and reports filed with other agencies, to the fullest extent possible.

The Board is authorized to examine each holding company and its subsidiaries. It may examine functionally regulated subsidiaries only if: (1) the Board has reasonable cause to believe that such a subsidiary is engaged in activities that pose a material risk to an af-

filiate depository institution; (2) it reasonably believes after reviewing the relevant reports that examining the subsidiary is necessary to adequately inform the Board of the systems for monitoring risks; or, (3) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with the BHCA or other Federal law that the Board has specific jurisdiction to enforce and the Board cannot make such a determination through examination of an affiliated depository institution or the holding company. The Board is directed to use, to the fullest extent possible, examinations made by appropriate Federal and State regulators.

The Board is not authorized to prescribe capital requirements for any functionally regulated subsidiary that is in compliance with applicable capital requirements of another Federal regulatory authority, a State insurance authority, or is a registered investment adviser or licensed insurance agent. The legislation also makes it clear that securities and insurance activities conducted in regulated entities are subject to functional regulation by the relevant State securities authorities, the Securities and Exchange ("SEC"), or State insurance regulators.

The Board is prohibited from requiring a broker-dealer or insurance company that is a bank holding company to infuse funds into a depository institution if the company's functional regulator determines, in writing, such action would have a material adverse effect on the broker-dealer or insurance company. If the functional regulator makes such a determination, the Board may require the holding company to divest its depository institution. All the Federal banking agencies are subject to the same limits on reports, examinations and capital requirements for functionally regulated affiliates which apply to the Board. This ensures that the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the Federal Deposit Insurance Corporation ("FDIC") will not be able to assume and duplicate the function of being the general supervisor over functionally regulated subsidiaries. The legislation specifically preserves, however, the FDIC's authority to examine a functionally regulated affiliate. This authority, which should be used sparingly, is necessary to protect the deposit insurance funds.

The legislation also specifically addresses indirect action by the Board against functionally regulated affiliates. Consistent with functional regulation, the Board's authority to take indirect action against a functionally regulated affiliate is limited. The Board may not promulgate rules, adopt restrictions, safeguards or any other requirement affecting a functionally regulated affiliate unless the action is necessary to address a "material risk" to the safety and soundness of the depository institution or the domestic or international payments system and it is not possible to guard against such material risk through requirements imposed directly upon the depository institution.

The Federal banking regulators are empowered to adopt prudential safeguards governing transactions between depository institutions, their subsidiaries and affiliates so as to avoid, among other items, significant risk to the safety and soundness of the institution. The regulators are required to review these safeguards regularly and modify or eliminate those requirements which are no longer necessary.

Bank holding companies may elect to become FHCs by meeting the statutory requirements and filing a declaration and a certification with the Board. The legislation makes it clear that a duplicative registra-

tion statement under section 5 of the BHCA is not required. The integrity of the deposit insurance funds is preserved by prohibiting the use of deposit insurance funds to benefit any shareholder, subsidiary or nondepository affiliate of an FHC. This section ensures that the federal safety net is not extended to persons who are not entitled to Federal deposit insurance coverage.

The savings bank restrictions in the BHCA are repealed. This repeal is designed to conform the regulation of savings bank life insurance to other provisions of Federal banking law.

The Conferees intend that the Board be flexible in its application of holding company consolidated capital standards for the leverage requirement and the timing of the asset calculations to FHCs of which the predominant regulated subsidiary is a broker-dealer. The Conferees intend that, to the extent the Board deems feasible and consistent with the overall financial condition and activities of the holding company, the capital requirements for such holding companies be consistent with the capital standards applied by the SEC to the broker-dealer, which accounts for the predominant amount of assets and activities of the holding company.

#### Subtitle C—Subsidiaries of National Banks

**Senate Position:** The Senate bill authorizes a national bank to control a subsidiary engaged in financial activities permissible for a bank holding company (but not permissible for a national bank directly) under section 4(k) if the bank has consolidated total assets not exceeding \$1 billion, is not affiliated with a bank holding company, is well capitalized, and well managed. For the purpose of determining a parent national bank's regulatory capital, a deduction from assets and tangible equity is required for the amount of outstanding equity investments made in a financial subsidiary. In addition, the assets and liabilities of the financial subsidiary must not be consolidated with those of the parent bank. Equity investments in the operating subsidiary by a parent national bank must not exceed the amount the bank could pay as a dividend without obtaining prior regulatory approval. The Senate bill also clarifies that a national bank may conduct through a subsidiary any activity which the national bank may engage directly and any activity lawfully conducted as of the date of enactment of this legislation.

**House Position:** The House bill authorizes a national bank subsidiary to engage only in activities permissible for national banks to engage in directly, activities otherwise expressly authorized by statute, and activities that are financial in nature or incidental to financial activities. Financial activities are defined as those activities permissible for an FHC or activities that the Secretary of the Treasury determines to be financial in nature or incidental to financial activities in consultation and coordination with the Federal Reserve Board. Excluded from the list of permissible financial activities are insurance underwriting, insurance company portfolio investments, and real estate investment and development. National bank operating subsidiaries also may engage in developing activities. In order for a national bank operating subsidiary to engage in activities that are financial in nature, its parent bank and all its depository institution affiliates must be well capitalized, well managed, and have a satisfactory CRA rating. A cure procedure is established to address situations where there is a failure to comply with these conditions. It also requires that the aggregate amount of the national bank parent's equity investments in the bank be deducted from the bank's capital including the operating subsidiary's retained earnings. In addition,

the assets and liabilities of the subsidiary must not be consolidated with those of its parent bank. Equity investments in the operating subsidiary by a parent national bank must not exceed the amount the bank could pay as a dividend without obtaining prior regulatory approval.

*Conference Substitute:* The Senate receded to the House with an amendment.

Under the amendment, national banks of any size are permitted to engage through a financial subsidiary only in financial activities (with exceptions) authorized by this Act. Section 121 specifically excludes four types of activities for financial subsidiaries: insurance or annuity underwriting, insurance company portfolio investments, real estate investment and development, and merchant banking (subject to section 122). These types of financial activities may only be done in FHC affiliates. The federal banking regulators are prohibited from interpreting these provisions to provide for any expansion of these activities contrary to the express language of this statute. It is the intent of the Conferees that these new statutory provisions—and the regulations to be adopted pursuant thereto—supercede and replace the OCC's Part 5 regulations on operating subsidiaries.

#### Subtitle D—Preservation of FTC Authority

##### *Section 131. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions*

*Senate Position:* No provision.

*House Position:* Section 141 of the House amendment amends section 11(b)(1) of the BHCA (12 U.S.C. section 1849(b)(1)) to provide for notice to the Federal Trade Commission ("FTC") when the Board of Governors of the Federal Reserve System approves a transaction under section 3 of the BHCA if that transaction also involves a transaction under section 4 or 6 of the BHCA.

*Conference Substitute:* The Senate receded to the House with an amendment.

Under section 131 of the Conference Report, the modification simply eliminated the reference to section 6 because the new activities for FHCs are now included within section 4 of the BHCA as amended by the Conference Report. The FTC currently has no role in reviewing pure section 3 transactions, and this amendment does not change that. However, the FTC does perform reviews of certain section 4 transactions. This amendment will simply allow the FTC to coordinate its review with the Board in those cases that also involve a section 3 transaction.

##### *Section 132. Interagency data sharing*

*Senate Position:* No provision.

*House Position:* Section 142 of the House amendment provided that, except as otherwise prohibited by law, the banking regulators who review mergers or acquisitions (the OCC, the OTS, the FDIC, and Federal Reserve Board) shall make available to the antitrust agencies (the Department of Justice and the Federal Trade Commission ("FTC")) any information in the bank regulators' possession that the antitrust agencies deem necessary for their antitrust review under sections 3, 4, or 6 of the BHCA, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

*Conference Substitute:* The Senate receded to the House with an amendment.

Under section 132 of the Conference Report, the modification eliminated the reference to section 6 of the BHCA because the new activities for FHCs are now included within section 4 of the BHCA as amended by the Conference Report. In addition, the modi-

fication added new sections 132(b) and 132(c). New section 132(b) requires that any information shared under this provision be kept confidential; that before any information shared under this provision is disclosed to a third party, the agency which shared it must be notified in writing and given a chance to oppose or limit the disclosure; that any sharing under this provision does not affect any claim of privilege with respect to such information; and that nothing in this section shall be construed to limit access to any information by the Congress or the Comptroller General. New section 132(c) simply applies the provisions of new section 132(b) to the sharing of information between Federal banking agencies and State regulators or any other party.

In the past, there have been difficulties with banking agencies sharing bank examination reports with the antitrust agencies because of doubts about whether they had sufficient authority to do so. The reports have generally been shared in the end. However, in cases of failing institutions in which review has been expedited or of institutions taken over by the government, delays in providing these reports have sometimes impeded antitrust review. This language simply allows all of the involved agencies to do their respective tasks in the most expeditious manner possible.

##### *Section 133. Clarification of status of subsidiaries and affiliates*

*Senate Position:* No provision.

*House Position:* Section 143(a) of the House amendment provided that subsidiaries or affiliates of banks or savings associations which are not themselves banks or savings associations shall not be treated as banks or savings associations for purposes of the FTC Act or any other law enforced by the FTC. Section 143(b) clarified that nothing in this section shall be construed as restricting the authority of any Federal banking agency.

Section 143(c) amended the existing BHCA exceptions to the Hart-Scott-Rodino ("H-S-R") Act, 15 U.S.C. section 18a(c)(7) and 18a(c)(8). Under current law, transactions subject to approval under section 3 of the BHCA are exempt from H-S-R review. Likewise, assuming certain conditions are met, transactions subject to approval under section 4 are also exempt. The amendments in section 143(c) clarified that when FHCs acquire other FHCs and either of those companies was involved in new activities under section 6 of the BHCA as amended by the House amendment, the portion of the transaction involving those section 6 activities would be subject to H-S-R review. However, the remainder of the transaction will continue to be reviewed under the existing BHCA.

*Conference Substitute:* The Senate receded to the House with modifications.

Under section 133 of the conference report, the modification to section 133(a) clarified that the language applied to any provision of law applied by the FTC under the FTC Act. This clarification makes it clear that the section is limited to laws that the FTC currently enforces and is not intended to provide authority to enforce any new statutes. Under current law, section 5(a)(2) of the FTC Act prohibits the FTC from enforcing the Act against banks or savings associations. The conference report will, however, allow these entities to acquire other kinds of businesses, for example, securities firms, against which the FTC can currently enforce the Act. This provision simply makes it clear that these kinds of businesses do not fall within the bank or savings association exemption because they are owned by such an entity.

There was no modification to the savings provision contained in section 133(b).

The modification to section 133(c) replaced the reference to section 6 of the BHCA as amended by the House amendment with a reference to section 4(k) of the BHCA as amended by the conference report. Under the conference report, section 4(k) now contains the language allowing FHCs to engage in new activities. This amendment to the H-S-R exemptions will allow the antitrust agencies to continue to review mergers between insurance companies, securities firms, and other businesses newly allowed to FHCs as they are today, notwithstanding the ownership interest of the FHC. This clarification for the new FHC structure is consistent with, and does not disturb, existing law and precedents under which mergers involving complex corporate entities, some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not, are considered according to agency jurisdiction over their respective parts, so that normal H-S-R Act requirements apply to those parts that do not fall within the specialized agency's specific authority. See 16 C.F.R. section 802.6.

##### *Annual GAO report (section 144 of the House amendment)*

*Senate Position:* No provision.

*House Position:* Section 144 of the House amendment provided for the General Accounting Office to submit an annual report to Congress on market concentration in the financial services industry for each of the next five years.

*Conference Substitute:* The House receded to the Senate.

#### SUBTITLE E—NATIONAL TREATMENT

##### *Section 141. Foreign Banks that are Financial Holding Companies*

*Senate Position:* The Senate bill, at section 151, permits termination of the financial grandfathering authority granted by the International Banking Act and other statutes to foreign banks to engage in certain financial activities. Foreign banks with grandfathered financial affiliates would be permitted to retain these grandfathered companies on the same terms that domestic banking organizations are permitted to establish them.

*House Position:* The House amendment, at section 151, is similar.

*Conference Substitute:* The Senate receded to the House.

##### *Section 142. Representative offices*

*Senate Position:* The Senate bill, at section 152, requires prior approval by the Federal Reserve Board for the establishment of representative offices that are subsidiaries of a foreign bank.

*House Position:* The House bill, at section 153, contains the same provision.

*Conference Substitute:* The Senate receded to the House.

#### Subtitle F—Direct Activities of Banks

*Senate Position:* The Senate bill authorizes national banks to deal in, underwrite, and purchase municipal bonds for their own investment accounts.

*House Position:* The House amendment is identical.

*Conference Substitute:* The House receded to the Senate.

#### TITLE II

##### Subtitle A—Brokers and Dealers

*Senate Position:* The Senate bill repeals the exemptions from the definition of broker and dealer under the Federal securities laws that currently apply to banks, generally subjecting banks and their affiliates and subsidiaries to the same regulation as all other providers of securities products. However, the Senate bill replaces the general bank exemption with specific exemptions for certain bank activities.

**House Position:** The House amendment also repeals the general bank exemptions from the definition of broker and dealer under the Federal securities laws but provides more limited exemptions than does the Senate bill.

**Conference Substitute:** Subtitle A of title II of the Gramm-Leach-Bliley Act provides for functional regulation of bank securities activities. The Conferees retained certain limited exemptions to facilitate certain activities in which banks have traditionally engaged. These exceptions relate to third-party networking arrangements, trust activities, traditional banking transactions such as commercial paper and exempted securities, employee and shareholder benefit plans, sweep accounts, affiliate transactions, private placements, safekeeping and custody services, asset-backed securities, derivatives, and identified banking products.

The Conferees provided for an exception for networking arrangements between banks and brokers. Revisions to Rule 1060 recently approved by the National Association of Securities Dealers ("NASD") are in conflict with this provision. As a consequence, revisions to the rule should be made to exempt banks and their employees from the provisions' coverage.

The Conferees provided that banks that effect transactions in a trustee or fiduciary capacity under certain conditions will be exempt from registration under the Federal securities laws if the bank: (1) is chiefly compensated by means of administration and certain other fees, including a combination of such fees, and (2) does not publicly solicit brokerage business. The Conferees expect that the SEC will not disturb traditional bank trust activities under this provision.

The Conferees also provided that classification of a particular product as an identified banking product shall not be construed as a finding or implication that such product is or is not a security for purposes of the securities laws, or is or is not a transaction for any purpose under the Commodity Exchange Act. The Conferees do not intend in the Gramm-Leach-Bliley Act to express an opinion upon or to address the issue of legal certainty for swap agreements under the securities and commodity exchange laws.

The Conferees also provided that the Commodity Exchange Act is not amended by the Gramm-Leach-Bliley Act, and no transaction or person which is otherwise subject to the jurisdiction of the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act is exempted from such jurisdiction because of the provisions of the Gramm-Leach-Bliley Act.

For new hybrid products, the Conferees codified in the securities laws a process that requires the SEC to act by rulemaking prior to seeking to regulate any bank sales of any such new product. This rulemaking process is designed to give notice to the banking industry in an area that could involve complex new products with many elements.

The process contemplated by the Conferees would work as follows. Prior to seeking to require a bank to register as a broker or dealer with respect to sales of any new hybrid product, the SEC would have to engage in a rulemaking. In its rulemaking, the SEC would need to find that the new product is a security. In addition, the SEC would have to determine that the product is a "new hybrid product."

A new hybrid product is not one of the products listed in the definition of "identified banking product". Including a product on the list of identified banking products shall not be construed as a finding or implication that such product is or is not a security, but it would not be a new hybrid product. The Conferees codified the definition of

Identified Banking Products as a free-standing provision of law, neither in the securities laws nor in the banking laws.

In addition, during the rulemaking process, the SEC must also make a number of findings. When considering whether such an action is in the public interest, the SEC must also consider whether the action will promote efficiency, competition and capital formation, as set forth in section 3(f) of the Securities Exchange Act of 1934 ("Exchange Act"). The Conferees note that the SEC's record in implementing section 3(f) has failed to meet Congressional intent. The Conferees expect that the SEC will improve in this area.

Prior to commencing a rulemaking process, the SEC is required to consult with and seek the concurrence of the Federal Reserve Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the SEC shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

If the Board seeks review of any final regulation under this section, such review will serve as a stay on the rulemaking until final adjudication of the matter between the SEC and the Board. In considering such an appeal, the United States Court of Appeals for the District of Columbia Circuit shall determine to affirm and enforce or set aside a regulation of the SEC under this subsection, based on the determination of the court as to whether: (1) the subject product is a new hybrid product; (2) the subject product is a security; (3) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the SEC nor to the Board.

#### Subtitle B—Bank Investment Company Activities

**Senate Position:** No provision.

**House Position:** The House bill amends the Investment Advisers Act and the Investment Company Act to subject banks that advise mutual funds to the same regulatory scheme as other advisers to mutual funds. It also requires banks to make additional disclosure when a fund is sold or advised by a bank.

**Conference Substitute:** The Senate recedes to the House provision with an amendment.

#### Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

**Senate Position:** No provision.

**House Position:** The House amendment creates a new investment bank holding company structure under the Exchange Act. This subtitle is designed to implement a new concept of SEC supervision of broker/dealer holding companies (that do not control depository institutions with certain exceptions) that voluntarily elect SEC supervision. This provision is designed to assure that the supervision of an investment bank holding company by the SEC is a meaningful option. Non-U.S. financial institutions supervisors, when reviewing regulatory applications or notices submitted by a U.S. financial institution supervised in the United States as an investment bank holding company by the SEC under section 231, shall treat the SEC as the principal U.S. consolidated home country supervisor of such financial institution on the same basis and terms as if the Federal Reserve Board were the

principal U.S. consolidated home country supervisor.

**Conference Substitute:** The Senate recedes with an amendment. The Conferees eliminated the authority of the SEC to regulate investment bank holding company capital.

#### Subtitle D—Banks and Bank Holding Companies

**Senate Position:** No provision.

**House Position:** The House amendment requires the SEC to consult and coordinate comments with the appropriate Federal banking regulators before any action or rendering any opinion with respect to the manner in which an insured depository institution or insured depository holding company reports loan loss reserves.

**Conference Substitute:** The Senate recedes to the House provision. The Conferees note that the SEC's actions with respect to the reporting of loan loss reserves by certain insured depository institutions did not reflect adequate consultation with the Federal banking agencies with respect to potential implications on the safety and soundness of the Federal deposit insurance fund. The Conferees expect that this provision will facilitate better coordination and decision-making by the SEC in this area.

#### TITLE III—INSURANCE

##### Subtitle A—State Regulation of Insurance

**Senate Position:** The Senate bill contains a number of provisions intended to preserve State regulation of insurance.

**House Position:** The House amendment similarly contains a number of provisions intended to preserve and enhance State regulation of insurance.

**Conference Substitute:** The Senate receded to the House with an amendment.

In general, Subtitle A of Title III reaffirms that States are the regulators for the insurance activities for all persons, including acting as the functional regulator for the insurance activities of federally chartered banks. This functional regulatory power is subject to section 104 of Title I, however, which sets forth the appropriate balance of protections against discriminatory actions. Federally chartered banks and their subsidiaries are prohibited from underwriting insurance, except for authorized products. A rule of construction was added by the Conference Committee to prevent evasion of State insurance regulation by foreign reinsurance subsidiaries or offices of domestic banks, clarifying that providing insurance (including reinsurance) outside of the United States to indemnify an insurance product or company in a State shall be considered to be providing insurance as principal in that State.

Federally chartered banks are prohibited from engaging in any activity involving the underwriting or sale of title insurance, except that national banks may sell title insurance products in any State in which state-chartered banks are authorized to do so (other than through a "wild card provision"), so long as such sales are undertaken "in the same manner, to the same extent, and under the same restrictions" that apply to such state-chartered banks. Certain currently and lawfully conducted title insurance activities of banks are grandfathered, and existing State laws prohibiting all persons from providing title insurance are protected.

An expedited and equalized dispute resolution mechanism is established to guide the courts in deciding conflicts between Federal and State regulators regarding insurance issues. The "without unequal deference" standard of review does not apply to State regulation of insurance agency activities that were issued before September 3, 1998 (other than those protected by the scope of the safe harbor provision of section 104).

The Federal banking agencies are required to issue final consumer protection regulations within one year, to provide additional safeguards for the sale of insurance by any bank or other depository institution, or by any person at or on behalf of such institution.

State laws that prevent or significantly interfere with the ability of insurers to affiliate, become an FHC, or demutualize, are preempted, except as provided in section 104(c)(2), and with respect to demutualizing insurers for the State of domicile (and as set forth in the Redomestication Subtitle). State laws limiting the investment of an insurer's assets in a depository institution are also preempted, except that an insurer's State of domicile may limit such investment as provided.

The Federal banking agencies and the State insurance regulators are directed to coordinate efforts to supervise companies that control both depository institutions and persons engaged in the business of insurance, and to share, on a confidential basis, supervisory information including financial health and business unit transactions. The agencies are further directed to provide notice and to consult with the State regulators before taking actions which effect any affiliates engaging in insurance activities. A banking regulator is not required to provide confidential information to a State insurance regulator unless such State regulator agrees to keep the information in confidence and make all reasonable efforts to oppose disclosure of such information. Conversely, Federal banking regulators are directed to treat as confidential any information received from a State regulator which is entitled to confidential treatment under State law, and to make similar reasonable efforts to oppose disclosure of the information.

#### Subtitle B—Redomestication of Mutual Insurers

*Senate Position:* No provision.

*House Position:* The House bill allows mutual insurance companies to redomesticate to another state and reorganize into a mutual holding company or stock company. It only applies to insurers in States which have not established reasonable terms and conditions for allowing mutual insurance companies to reorganize into a mutual holding company. All licenses of the insurer are preserved, and all outstanding policies, contracts, and forms remain in full force. A redomesticating company must provide notice to the state insurance regulators of each State for which the company is licensed. A mutual insurance company may only redomesticate under this Subtitle if the State insurance regulator of the new (transferee) domicile affirmatively determines that the company's reorganization plan meets certain reasonable terms and conditions: the reorganization is approved by a majority of the company's board of directors and voting policyholders, after notice and disclosure of the reorganization and its effects on policyholder contractual rights; the policyholders have equivalent voting rights in the new mutual holding company as compared to the original mutual insurer; any initial public offering of stock shall be in accordance with applicable securities laws and under the supervision of the State insurance regulator of the transferee domicile; the new mutual holding company may not award any stock options or grants to its elected officers or directors for six months; all contractual rights of the policyholders are preserved; and the reorganization is approved as fair and equitable to the policyholders by the insurance regulators of transferee domicile.

*Conference Substitute:* The Senate receded to the House with an amendment.

#### SUBTITLE C—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

*Senate Position:* The Senate bill contains a sense of the Congress statement that States should provide for a uniform insurance agent and broker licensing system.

*House Position:* The House bill encourages the States to establish uniform or reciprocal requirements for the licensing of insurance agents. If a majority of the States do not establish uniform or reciprocal licensing provisions within a three-year period (as determined by the National Association of Insurance Commissioners ["NAIC"]), then the National Association of Registered Agents and Brokers ("NARAB") would be established as a private, non-profit entity managed and supervised by the State insurance regulators. State insurance laws and regulations shall not be affected except to the extent that they are inconsistent with a specific requirement of the Subtitle. Membership in NARAB is voluntary and does not affect the rights of a producer under each individual state license. Any state-licensed insurance producer whose license has not been suspended or revoked is eligible to join NARAB. NARAB shall be base membership criteria on the highest levels insurance producer qualification set by the States on standards such as integrity, personal qualification, education, training, and experience. NARAB members shall continue to pay the appropriate fees required by each State in which they are licensed, and shall renew their membership annually. NARAB may inspect members records, and revoke a membership where appropriate. NARAB shall establish an Office of Consumer Complaints, which shall have a toll-free phone number (and Internet website) to receive and investigate consumer complaints and recommend disciplinary actions. The Office shall maintain records of such complaints, which shall be made available to the NAIC and individual State insurance regulators, and shall refer complaints where appropriate to such regulators.

If the NAIC determines that the States have not met the uniformity or reciprocity requirements, then the NAIC has two years to establish NARAB. The NAIC shall appoint NARAB's board of directors, some of whom must have significant experience with the regulation of commercial insurance lines in the 20 States with the most commercial lines business. If within the time period allotted for NARAB's creation, the NAIC has still not appointed the initial board of directors for NARAB, then the initial directors shall be the State insurance regulators of the seven States with the greatest amount of commercial lines insurance. NARAB's bylaws are required to be filed with the NAIC, taking effect 30 days after filing unless disapproved by the NAIC as being contrary to the public interest or requiring a public hearing. The NAIC may require NARAB to adopt or repeal additional bylaws or rules as it determines appropriate to the public interest. The NAIC is given the responsibility of overseeing NARAB, and is authorized to examine and inspect NARAB's records, and require NARAB to furnish it with any reports.

If at the end of two years after NARAB is required to be established, (1) a majority of the States representing at least 50% of the total commercial-lines insurance premiums in the United States have not established uniform or reciprocal licensing regulations, or (2) the NAIC has not approved NARAB's bylaws or is unable to operate or supervise NARAB (or if NARAB is not conducting its activities under this Act), then NARAB shall be created and supervised by the President, and shall exist without NAIC oversight. The President shall appoint NARAB's board, with the advice and consent of the Senate, from

lists of candidates submitted by the NAIC. If the President determines that NARAB's board is not acting in the public interest, the President may replace the entire board with new members (subject to the advice and consent of the Senate). The President may also suspend the effectiveness of any rule or action by NARAB which the President determines is contrary to the public interest. NARAB shall report annually to the President and Congress on its activities.

State laws regulating insurance licensing that discriminate against NARAB members based on non-residency are preempted, as well as State laws and regulations which impose additional licensing requirements on non-resident NARAB members beyond those established by the NARAB board (pursuant to this Subtitle), except that State unfair trade practices and consumer protection laws are protected from preemption, including counter-signature requirements. NARAB is required to coordinate its multistate licensing with the various States. It is also required to coordinate with the States on establishing a central clearinghouse for license issuance and renewal, and for the collection of regulatory information on insurance producer activities. NARAB shall further coordinate with the NASD to facilitate joint membership. Any dispute involving NARAB shall be brought in the appropriate U.S. District Court under federal law, after all administrative remedies through NARAB and the NAIC have been exhausted.

*Conference Substitute:* The Senate receded to the House.

#### Subtitle D—Rental Car Agency Insurance Activities

*Senate Position:* The Senate bill provides that the requirements under section 104 with respect to mandatory licensing do not apply to persons who offer insurance connected with a short term motor vehicle rental so long as the State does not require such licensing.

*House Position:* The House bill creates a Federal presumption for a three-year period that no State law imposes any licensing, appointment, or education requirements on persons who rent motor vehicles for a period of 90 days or less and sell insurance to customers in connection with the rental transaction. This presumption shall not apply to a State statute, the prospective application of a statutorily-authorized final State regulation or order interpreting a State statute, or the prospective application of a court judgment interpreting or applying a State statute, if such State statute or final State regulation or order specifically and expressly regulates (or exempts from regulation) persons who solicit or sell such short term vehicle rental insurance. This presumption shall apply to the retroactive application of a final State regulation or order interpreting a general State insurance licensing statute, or the retroactive application of a court judgment interpreting or applying a general State insurance licensing statute, with respect to the regulation of persons who solicit or sell such short term vehicle rental insurance.

*Conference Substitute:* The Senate receded to the House.

#### Subtitle E—Confidentiality

*Senate Position:* No provision.

*House Position:* The House bill requires insurance companies and their affiliates to protect the confidentiality of individually identifiable customer health and medical and genetic information. Such companies may only disclose such information with the consent of the customer or for statutorily specified purposes.

*Conference Substitute:* The House receded to the Senate.



TITLE IV—UNITARY THRIFT HOLDING  
COMPANY PROVISIONS*Sec. 401. Prohibition on new unitary savings  
and loan holding companies*

*Senate Position:* The Senate bill, at section 601(a), amends the Home Owners' Loan Act to prohibit (except for corporate reorganizations) new unitary savings and loan holding companies from engaging in nonfinancial activities or affiliating with nonfinancial entities. The prohibition applies to a company that becomes a unitary savings and loan holding company pursuant to an application filed with the OTS after May 4, 1999. A grandfathered unitary thrift holding company (one in existence or applied for on or before May 4, 1999) retains its authority to engage in nonfinancial activities. The Senate bill, at section 601(b), allows mutual savings and loan holding companies to engage in new financial activities authorized under the Gramm-Leach-Bliley Act.

*House Position:* The House bill, at section 401(a), prohibits new unitary thrift holding companies after the grandfather date of March 4, 1999, from engaging in nonfinancial activities or from affiliating with a nonfinancial entity. The provision also allows a nonfinancial company to purchase a grandfathered unitary thrift holding company upon approval of an application filed with the OTS and approval or no objection to a notice filed with the Federal Reserve Board. The House bill, at section 401(b), permits a mutual holding company to engage in activities permissible for multiple stock holding companies and permits unitary mutual savings and loan holding companies to engage in the new financial activities authorized for FHCs.

*Conference Substitute:* The House receded to the Senate.

## TITLE V—PRIVACY

SUBTITLE A—DISCLOSURE OF NONPUBLIC  
PERSONAL INFORMATION

*Senate Position:* No provision.

*House Position:* The House bill contained important provisions providing consumers with new protections with respect to the transfer and use of their nonpublic personal information by financial institutions.

Among other things, the House bill directed relevant regulators to establish comprehensive standards for ensuring the security and confidentiality of consumers' personal information maintained by financial institutions; allowed customers of financial institutions to "opt out" of having their personal financial information shared with nonaffiliated third parties, subject to certain exceptions; barred financial institutions from disclosing customer account numbers or similar forms of access codes to nonaffiliated third parties for telemarketing or other direct marketing purposes; and mandated annual disclosure—in clear and conspicuous terms—of a financial institution's policies and procedures for protecting customers' nonpublic personal information.

*Conference Substitute:* The Senate receded to the House with an amendment.

The amendment modified the House position in the following ways:

1. The Federal functional regulators, the Secretary of the Treasury, and the FTC, in consultation with State insurance authorities, are directed to prescribe such regulations as may be necessary to carry out the purposes of the privacy subtitle. The House bill had called for a joint rulemaking. The relevant agencies are required to consult and coordinate with one another in order to assure to the maximum extent possible that the regulations each prescribes are consistent and comparable with those prescribed by the other agencies. It is the hope of the

Conferees that State insurance authorities would implement regulations necessary to carry out the purposes of this title and enforce such regulations as provided in this title.

2. To address the concern that the House bill failed to provide a mechanism for enforcing the subtitle's provisions against nonfinancial institutions, the Conferees agreed to clarify that the FTC's enforcement authority extends to such entities.

3. The Conferees agreed to clarify the relation between Title V's privacy provisions and other consumer protections already in law, by stating that nothing in the title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of the title regarding whether information is transaction or experience information under section 603 of that Act.

4. At the request of the Conferees from the Committee on Agriculture, the Conferees agreed to exclude from the scope of the privacy title any person or entity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, as well as the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971. The Conferees also excluded from this subtitle institutions chartered by Congress specifically to engage in securitization or secondary market transactions, so long as such institutions do not sell or transfer nonpublic personal information to nonaffiliated third parties. The Conferees granted the exception based on the understanding that the covered entities do not market products directly to consumers.

5. The Conferees agreed to clarify that a financial institution's annual disclosure of its privacy policy to its customers must include a statement of the institution's policies and practices regarding the sharing of nonpublic personal information with affiliated entities, as well as with nonaffiliated third parties.

6. The Conferees agreed to provide that the disclosure of nonpublic personal information contained in a consumer report reported by a consumer reporting agency does not fall within section 502's notice and opt out requirements.

7. The Conferees agreed to modify the statutory definition of "nonpublic personal information" by clarifying that such term does not encompass any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

8. The Conferees agreed to exclude disclosures to consumer reporting agencies from section 502(d)'s limitations on the sharing of account number information.

9. The Conferees agreed to give the relevant regulatory agencies the authority to prescribe exceptions to subsections (a) through (d) of section 502, rather than just sections 502(a) and (b), as provided for in the House bill.

10. The Conferees inserted language stating that the privacy provisions in the subtitle do not supersede any State statutes, regulations, orders, or interpretations, except to the extent that such State provisions are inconsistent with the provisions of the subtitle, and then only to the extent of the inconsistency. The amendment provides that a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this subtitle, as determined by the FTC in consultation with the agency or authority with jurisdiction

under section 505(a) over either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

11. Section 506 authorizes the Federal banking agencies and the National Credit Union Administration to prescribe joint regulations governing the institutions under their jurisdiction with respect to the Fair Credit Reporting Act; the Conferees agreed to an amendment giving the Board of Governors of the Federal Reserve the authority to prescribe FCRA regulations governing bank holding companies and their affiliates.

12. The Conferees agreed to modify section 502(e)(5), to include the Secretary of the Treasury as a "law enforcement agency" for the purposes of the Bank Secrecy Act, to avoid unintended interference with the existing functions of the Treasury's anti-money laundering unit, the Financial Crimes Enforcement Network ("FinCEN").

The Conferees wish to ensure that smaller financial institutions are not placed at a competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. Accordingly, in prescribing regulations pursuant to this subtitle, the agencies and authorities described in section 504(a)(1) should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. In issuing regulations under section 503, the regulators should take into account the degree of consumer access to disclosure by electronic means.

In exercising their authority under section 504(b), the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer.

The Conferees recognize the need to foster technological innovation in the financial services and related industries. The Conferees believe that the development of new technologies that facilitate consumers' access to the broad range of products and services available through online media should be encouraged, provided that such technologies continue to incorporate safeguards for consumer privacy.

SUBTITLE B—FRAUDULENT ACCESS TO  
FINANCIAL INFORMATION

*Senate Position:* The Senate bill contained provisions making it a Federal crime—punishable by up to five years in prison—to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed, customer information of a financial institution through fraudulent or deceptive means, such as by misrepresenting the identity of the person requesting the information or otherwise misleading an institution or customer into making unwitting disclosures of such information. In addition, it provided for a private right of action and enforcement by state attorneys general.

*House Position:* Similar provisions, with no private right of action or enforcement by State Attorneys General.

*Conference Substitute:* The Senate receded to the House with an amendment.

The amendment provided that authority for enforcing the subtitle would be placed in the FTC, the Federal banking agencies and the National Credit Union Administration (for enforcement of these provisions with respect to compliance by depository institutions within their jurisdiction).

TITLE VI—FEDERAL HOME LOAN BANK  
SYSTEM MODERNIZATION

The Senate and House bills reform the Federal Home Loan Bank ("FHLBank") System in several important ways. Mandatory FHLBank membership for Federal savings associations is eliminated, in order to provide completely voluntary membership. Small bank members are given expanded access to FHLBank advances. Governance of the FHLBanks is decentralized from the Federal Housing Finance Board ("FHFB") to the individual FHLBanks. The Resolution Funding Corporation ("REFCORP") obligation of the FHLBanks, stemming from the savings and loan crisis, is changed from a fixed dollar amount to a fixed percentage of annual net earnings. The Senate bill directs the General Accounting Office to study FHLBank capital and the House bill establishes a new capital structure for the FHLBanks. The conference committee addressed three of these major areas.

*Sec. 604. Advances to members; collateral*

**Senate Position:** The Senate bill authorizes community financial institutions (FDIC-insured depository institutions with assets less than \$500 million) to obtain long-term FHLBank advances for lending to small businesses, small farms, and small agribusinesses. Eligible collateral for community financial institutions receiving any FHLBank advances could include secured loans for small business, agriculture, or securities representing a whole interest in such loans.

**House Position:** The House bill authorizes community financial institutions to obtain long-term FHLBank advances for small business, agricultural, rural development, or low-income community development lending. Eligible collateral for community financial institutions receiving any FHLBank advances could include secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans. Such advances-funded non-housing loans are treated as qualified thrift investments in determining required FHLBank stock purchases for community financial institutions that are not qualified thrift lenders ("QTLs").

**Conference Substitute:** The House receded to the Senate on the purposes and collateral for advances to community financial institutions. Greater stock purchases required of FHLBank members, that are not QTLs, when they receive advances are eliminated as is the requirement that such members only apply for advances for housing finance purposes. A priority for making advances to QTL members and a 30% limit on total advances to non-QTL members are also removed. Restrictions on obtaining new advances and having to repay advances after three years, applicable to savings associations that are not QTLs, are eliminated.

*Sec. 606. Management of FHLBanks*

**Senate Position:** The Senate bill changed the term of elected FHLBank directors from two to four years to make the term the same as for appointed directors. It transferred from the FHFB to the individual FHLBanks authority over a number of operational areas. It also gave the FHFB the same enforcement authority over FHLBanks and their executive officers and directors as the Federal banking agencies and the Office of Federal Housing Enterprise Oversight have under their statutes.

**House Position:** The House bill contained the same provisions. It also empowered the FHFB to address any capital insufficiencies resulting from voluntary membership and eliminated the 20:1 advances to stock ratio limit for a FHLBank member.

**Conference Substitute:** The Conference set terms for both elected and appointed directors at 3 years (staggered with approximately one-third of the terms expiring each year). A FHLBank's board of directors is authorized to elect by majority vote the board's Chairperson and Vice Chairperson. The term of office for the Chairperson and Vice Chairperson is two years. The annual salaries of FHLBank directors may not exceed specified amounts plus reimbursement of expenses. The maximum amounts are: Chairperson—\$25,000; Vice Chairperson—\$20,000; and other directors—\$15,000. FHLBank directors may reside outside the FHLBank district if they are an officer or director of a member institution located in the district. The Senate receded to the House regarding the provisions on capital insufficiencies and the advances to stock ratio limit.

*Sec. 608. Capital structure of the FHLBanks*

**Senate Position:** The Senate bill directs the General Accounting Office to submit to Congress within one year of enactment a study on possible revisions to the FHLBanks' capital structure, including the need for more permanent capital, a statutory leverage ratio, and a risk-based capital structure. GAO would also study the impact such revisions might have on the FHLBanks' operations, including the REFCORP payment obligation.

**House Position:** The House bill establishes a new capital structure for the FHLBanks. The FHLBanks were authorized to issue three classes of stock: Class A (redeemable on 6-months notice), Class B (redeemable on 5-years notice), and Class C (nonredeemable). FHLBanks were required to meet a 5% leverage minimum tied to total capital and a risk-based requirement tied to permanent capital. Permanent capital included Class C stock, retained earnings, and up to 1% of a FHLBank's assets in Class B stock. Total capital included permanent capital plus Class A stock, Class B stock (other than what counted toward permanent capital), and a general allowance for losses. A FHLBank must at all times comply with both the leverage and risk-based capital requirements. In determining compliance with the 5% minimum leverage ratio, Class A stock was counted at paid-in value, Class B stock was weighted at 1.5 times paid-in value, and Class C stock and retained earnings at 2.0 times. The current capital structure of the FHLBanks must be maintained until the new capital requirements are fully implemented. Within one year of enactment, the FHFB must issue implementing regulations. The board of directors of each FHLBank must develop a capital plan, subject to FHFB approval. The FHLBanks have up to three years to carry out their plans.

**Conference Substitute:** The Senate receded to the House with an amendment regarding a new capital structure. Two classes of stock are authorized: Class A (redeemable on 6-months notice) and Class B (redeemable on 5-years notice). FHLBanks are required to meet a 5% leverage minimum tied to total capital and a risk-based requirement tied to permanent capital. Permanent capital includes Class B stock and retained earnings. Total capital includes permanent capital plus Class A stock, generally. In determining compliance with the 5% minimum leverage ratio, Class A stock is counted at paid-in value and Class B stock and retained earnings are weighted at 1.5 times; however, a FHLBank's total capital, determined without taking into account any multiplier, must not be less than 4% of total assets.

The weighting provision is included to encourage the FHLBanks to build more permanent, longer-term capital. Using the capital

multiplier, the paid-in value of outstanding Class A stock plus 1.5 times the paid-in value of outstanding Class B stock and retained earnings must be at least 5% of total assets. Using no weighting factor, total capital must be at least 4% of total assets. For example, a FHLBank with \$100 million in assets would comply with \$5 million in Class A capital stock or \$2 million in Class A capital stock and an unweighted \$2 million in Class B capital stock and retained earnings (which would constitute \$3 million on a weighted basis).

A FHLBank's permanent capital, used to measure its compliance with the risk-based capital requirement, consists of the amounts paid by members for Class B stock and the amount of the FHLBank's retained earnings. The amount of retained earnings that may be included in permanent capital must be determined in accordance with generally accepted accounting principles (GAAP), which precludes the use of non-GAAP regulatory accounting standards for measuring retained earnings. The amount of Class B stock that is to be included in permanent capital is the full amount paid by a member to the FHLBank for the purchase of Class B stock.

A FHLBank's total capital, used to measure its compliance with the statutory leverage ratio, consists of permanent capital, the amounts paid by members for Class A stock, any general allowance for losses (consistent with GAAP and subject to FHFB regulation), and any other amounts from sources determined by the FHFB to be available to absorb losses incurred by the FHLBank and appropriate for including as capital. Any loss reserve that is held or established against a specific asset of the FHLBank is expressly prohibited from being included in total capital, as such reserves are not capable of absorbing potential losses on other assets.

In recognition of Congressional concern regarding the Financial Management and Mission Achievement ("FMMA") rule recently proposed by the FHFB, the Chairman of the FHFB sent a letter on October 18, 1999 to the Senate and House Banking Committee Chairmen (inserted below) providing assurances that the proposal would be withdrawn, upon enactment of this legislation. It is the conference committee's understanding and expectation that the FMMA will be withdrawn and that the FHFB will take no action to promulgate proposed or final regulations limiting assets or advances beyond those currently in effect until the statutorily required FHLBank System capital rules are finalized and the statutory period for submission of capital plans by the FHLBanks has expired. If and when the FHFB develops a new FMMA, or similar rules, we expect that the FHFB will provide ample opportunity for public comment and hearings. It is the desire of the conference committee that the FHFB consult with the Banking Committees regarding both the capital regulations and any financial management and/or mission related rules prior to issuing them in proposed form.

FEDERAL HOUSING FINANCE BOARD.

Washington, DC, October 18, 1999.

Hon. PHIL GRAMM,  
Chairman, Committee on Banking, Housing,  
and Urban Affairs, Washington, DC.

Hon. JIM LEACH,  
Chairman, Committee on Banking and Financial Services, Washington, DC.

DEAR SENATOR GRAMM AND CONGRESSMAN LEACH: As you proceed to consider legislation to modernize the Federal Home Loan Bank System as part of the S. 900/H.R. 10 conference, I am aware that there is substantial concern regarding our proposed Financial Management and Mission Achievement regulation (FMMA). Unfortunately, this legitimate concern regarding a far-reaching

regulatory initiative has resulted in a proposal for a statutory moratorium on our regulatory authority. Despite the best efforts of well-meaning advocates, such statutory language can only lead to serious ambiguity and potential litigation over the independent regulatory authority of the Finance Board.

Therefore, this letter is intended to give you and your colleagues on the Committee of Conference solid assurances about our intentions upon final enactment of the statute being drafted in conference. Upon such enactment, the Finance Board will:

1. Withdraw, forthwith, its proposed FMMA.

2. Proceed in accordance with the statutory instructions regarding regulations governing a risk-based capital system and a minimum leverage requirement for the Federal Home Loan Banks.

3. Take no action to promulgate proposed or final regulations limiting assets or advances beyond those currently in effect (except to the extent necessary to protect the safety and soundness of the Federal Home Loan Banks) until such time as the regulations described in number 2 have become final and the statutory period for submission of capital plans by the Banks has expired.

4. Consult with each of you and your colleagues on the Banking Committees of the House and the Senate, regarding the content of both the capital regulations and any regulations on the subjects described in number 3, prior to issuing them in proposed form.

I believe that these commitments cover the areas of concern which have led to a proposal for moratorium legislation. You can rely on this commitment to achieve those legitimate ends sought by moratorium proponents without clouding the necessary regulatory authority of the Finance Board which could result from statutory language.

Thank you for your consideration.

Sincerely,

BRUCE A. MORRISON.

#### TITLE VII—OTHER PROVISIONS

##### Subtitle A—ATM Fee Reform

**Senate Position:** The Senate bill at Title VII requires automated teller machine ("ATM") operators who impose a fee for use of an ATM by a noncustomer to post a notice on the machine and on the screen that a fee will be charged and the amount of the fee. This notice must be posted before the consumer is irrevocably committed to completing the transaction. A paper notice issued from the machine may be used in lieu of a posting to the screen. No surcharge may be imposed unless the notices are made and the consumer elects to proceed with the transaction. A notice is required when ATM cards are issued that surcharges may be imposed by other parties when transactions are initiated from ATMs not operated by the card issuer. ATM operators are exempt from liability if properly placed notices on the machines are subsequently removed, damaged, or altered by anyone other than the ATM operator.

**House Position:** Same.

**Conference Substitute:** The House receded to the Senate with an amendment.

The amendment grants a temporary exemption for those older machines that are unable to provide certain of the notices required.

##### Subtitle B—Community Reinvestment

##### Sec. 711. CRA sunshine requirements

**Senate Position:** Section 312 of the Senate bill amends the Federal Deposit Insurance Act by creating a new Section 46, to require full disclosure of agreements entered into between insured depository institutions or their affiliates and nongovernmental entities or persons made pursuant to or in connection with the fulfillment of the CRA. The

section does not confer any authority on the Federal banking agencies to enforce the provisions of these agreements.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate, with an amendment.

As recommended by the Conferees, the provision requires full disclosure of agreements, as defined in this section, between an insured depository institution or affiliate and a nongovernmental entity or person where the agreement is made pursuant to or in connection with the CRA, involving funds or other resources of an insured depository institution or affiliate.

The provision is not intended to define as a CRA agreement an individual mortgage loan (although it could apply to agreements involving, for example, parties acting as mortgage intermediaries or facilitators), or other specific contract to an individual, business, farm, or other entity, where funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of borrowed funds to other parties. In addition, the scope of the provision does not extend to an agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA. This exception to the coverage could include, for example, service organizations such as civil rights groups, community groups providing housing or other services in low-income neighborhoods, the American Legion, community theater groups, and so forth. The Federal Reserve Board may prescribe regulations to provide further exemptions consistent with the purposes of the provision.

In defining the agreements to which this provision would apply, the legislation assigns to the appropriate Federal banking agency the responsibility to identify a list of factors that the agency determines have a material impact on the agency's decision to approve or disapprove an application for a deposit facility or to assign a rating in an examination under the CRA. It is expected that the regulator will include in such list a full enumeration of the relevant factors that the agency reviews and considers in examining the performance of an insured financial institution in connection with the CRA, including any and all items a regulator would attach importance to in determining the evaluation under the act of the performance of a financial institution.

The Conferees note that while an agency may not give a great deal of weight to a mere agreement to perform certain CRA-related activities, per se, the agency does look carefully at the activities that the institution may have actually performed in fact pursuant to such an agreement. The disclosure and reporting requirements of this section apply to agreements defined in subsection (a) in either event.

As a general rule, the parties are required to disclose fully such agreements and make them available to the public and to the Federal banking agencies.

In addition, parties to each CRA agreement are required to report at least once each year on the use of resources provided pursuant to each agreement. A bank would file its report directly with its Federal regulator. A nongovernmental party is required to file its report with the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to the agreement, either directly with the agency or via the insured depository institution, which would be required promptly to transmit the report to the Federal banking agency.

The Federal banking agencies are directed, in implementing regulations under this provision, to minimize the regulatory burden on reporting parties. One way in which to accomplish this goal would be wherever possible and appropriate with the purposes of this section, to make use of existing reporting and auditing requirements and practices of reporting parties, and thus avoid unnecessary duplication of effort. The Managers intend that, in issuing regulations under this section, the appropriate Federal supervisory agency may provide that the nongovernmental entity or person that is not an insured depository institution may, where appropriate and in keeping with the provisions of this section, fulfill the requirements of subsection (c) by the submission of its annual audited financial statement or its Federal income tax return.

##### Sec. 712. Small bank regulatory relief

**Senate Position:** The Senate provision amended the CRA to exempt from the provisions of that Act banks and savings and loan associations with total assets less than \$100 million and that are located in nonmetropolitan areas.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate provision with an amendment.

The provision directs that "regulated financial institutions" with aggregate assets not exceeding \$250 million will be subject to routine examinations under the CRA as follows: (i) not more than once every 60 months if the institution received a rating of 'outstanding record of meeting community credit needs' at its most recent examination; (ii) not more than once every 48 months if the institution received a rating of 'satisfactory record of meeting community credit needs' at its most recent examination; and (iii) as deemed necessary by the appropriate Federal banking agency if the institution received a rating of less than 'satisfactory record of meeting community credit needs' at its most recent examination. The provision also states that the Federal banking agencies may subject an institution to more frequent or less frequent examinations for reasonable cause. A regulated financial institution shall remain subject to examination under this title in connection with an application for a deposit facility.

##### Sec. 713-715. Federal Reserve Board and Treasury studies, Impact on CRA

**Senate Position:** No provision.

**House Position:** The House bill at Section 110 requires a study by the Secretary of the Treasury, in consultation with the Federal banking agencies, of the extent to which adequate services are being provided as intended by the CRA, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of the Gramm-Leach-Bliley Act. The report must be submitted to the Congress within two years.

**Conference Substitute:** The Senate receded to the House with an amendment directing, in addition, that the Federal Reserve Board conduct a comprehensive study of the CRA, in consultation with the Chairman and Ranking Member of the House Banking and Financial Services Committee and the Chairman and Ranking Member of the Senate Banking, Housing, and Urban Affairs Committee. The study is to focus on default rates, delinquency rates, and the profitability of loans made in conformity with that Act. The report must be submitted to the House and Senate Banking Committees no later than March 15, 2000. The provision also directs that the report and all of the supporting data be made available at the same time to the public by the Federal Reserve Board, to the extent that the data are not confidential.

The Conferees recommended further amending the House study with an amendment permitting the Secretary of the Treasury to submit to the Congress by March 15, 2000, a baseline report in addition to the final report as required in the House provision. The purpose of the baseline report is to give a set of data against which the Secretary will be able to measure change by the end of the two-year reporting period.

The Conferees also recommended an amendment to the House language to state that nothing in the Gramm-Leach-Bliley Act shall be construed to repeal any provision of the CRA.

#### Subtitle C—Other Regulatory Improvements

##### *Sec. 721. Expanded small bank access to S corporation treatment*

**Senate Position:** The Senate bill at section 302 requires the GAO to study and report to Congress within six months of the date of enactment on certain revisions to S corporation rules permitting greater access by community banks to S corporation treatment.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate.

##### *Sec. 722. "Plain Language" requirement for Federal banking agency rules*

**Senate Position:** The Senate bill at section 306 directs the Federal banking agencies to use plain language in all proposed and final rule-makings published by the agency in the Federal Register after January 1, 2000, and to report to Congress by no later than March 1, 2001 on how they have complied with the plain language requirement.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate.

##### *Sec. 723. Retention of "Federal" in name of converted Federal savings associations*

**Senate Position:** The Senate bill at section 307 would permit Federal savings associations that convert to national or state bank charters to keep the word "Federal" in their names.

**House Position:** Same.

**Conference Substitute:** The Senate receded to the House.

##### *Sec. 724. Control of Bankers' Banks*

**Senate Position:** The Senate bill at section 310 allows one or more thrift institutions to own a state-chartered bank or trust company, whose business is restricted to accepting deposits from thrift institutions or savings banks, deposits arising from the corporate business of the thrift institutions or savings banks that own the bank or trust company, or deposits of public funds.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate.

##### *Sec. 725. Provision of technical assistance to microenterprises*

**Senate Position:** The Senate bill at section 316 establishes a grant program to fund non-profit microenterprise development organizations, programs, collaboratives, or intermediaries engaged in (1) providing training and technical assistance to low-income and disadvantaged entrepreneurs interested in starting or expanding their own businesses; (2) building the capacity of organizations that serve low-income and disadvantaged entrepreneurs; and (3) supporting research and development aimed at identifying and promoting training and technical assistance programs that effectively serve low-income and disadvantaged entrepreneurs.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate with an amendment.

While the Senate bill made the new microenterprise program a part of the Treasury

Department's Community Development Financial Institutions program, the Conferees chose to have the new program administered by the Small Business Administration.

##### *Sec. 726. Federal Reserve audits*

**Senate Position:** The Senate bill at section 317 requires annual outside independent accounting firm audits of the Federal Reserve Banks and the Federal Reserve Board. In addition, the bill changes the definitions and rules that apply to the pricing of Federal Reserve System services under the Monetary Control Act.

**House Position:** No provision.

**Conference Substitute:** The House receded to the Senate with an amendment in the nature of a substitute. The substitute provision requires the Federal Reserve Board to order an annual independent audit of the financial statements of each Federal Reserve Bank and of the Board.

##### *Sec. 727. Authorization to release reports*

**Senate Position:** No provision.

**House Position:** The House bill at section 132 permits the Federal Reserve Board, at its discretion, to furnish exam reports and other confidential supervisory information concerning State member banks or other entities it examines to any Federal or State authorities with supervisory authority over an examined entity, to officers, directors, or receivers of the entity, or any other person that the Federal Reserve Board determines is proper. In addition, the House bill includes the Commodity Futures Trading Commission under definitions in the Right to Financial Privacy Act.

**Conference Substitute:** The Senate receded to the House with an amendment.

The amendment adds to the provision allowing the disclosure of reports and information by applying certain confidentiality requirements and procedures for disclosure.

##### *Sec. 728. General Accounting Office study of conflicts of interest*

**Senate Position:** No provision.

**House Position:** The House bill at section 193 requires the Comptroller General of the GAO to study the conflict of interest faced by the Federal Reserve Board between its role as a primary regulator of the banking industry and its role as a vendor of services. Specifically, the GAO should address the conflict between the Board's role as a regulator of the payment system and its role as a competitor with private sector providers of payment services, and how best to resolve that conflict. The study is due one year after enactment of the legislation.

**Conference Substitute:** The Senate receded to the House.

##### *Sec. 729. Study and report on adapting existing legislative requirements to on-line banking and lending*

**Senate Position:** No provision.

**House Position:** The House bill at section 195 requires the Federal banking agencies to conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be face-to-face contact, and report their recommendations on adapting those existing requirements to online banking and lending. The report, with any recommended legislative or regulatory action, is due one year after the date of enactment of the legislation.

**Conference Substitute:** The Senate receded to the House with an amendment changing the due date of the study to two years after date of enactment.

##### *Sec. 730. Clarification of source of strength doctrine*

**Senate Position:** No provision.

**House Position:** The House bill at section 197 enhances the source of strength doctrine

by, in certain circumstances, protecting the Federal banking agencies and the deposit insurance funds from claims brought by the bankruptcy trustee of a depository institution holding company or other person for the return of capital infusions.

**Conference Substitute:** The Senate receded to the House with an amendment in the nature of a substitute.

The substitute narrows and clarifies the circumstances under which a Federal banking agency would be protected from a claim. First, it clarifies that the transferred assets must be those of an affiliate or a controlling shareholder of an insured depository institution. The House amendment did not so specify. Second, section 730 provides that the transfer must be to or for the benefit of an insured depository institution and that it must be made by an affiliate or controlling shareholder of such insured depository institution. The House amendment did not include such clarifying language. Third, section 730 specifies that no person may bring a claim against a Federal banking agency for monetary damages, return of assets, or for other legal or equitable relief in connection with such transfer, consistent with certain limitations. The House amendment only referred to claims for monetary damages or for the return of assets or other property. Fourth, section 730 adds a definition of the term "claim." For purposes of this provision, a claim is defined as a cause of action based on Federal or State law providing for the avoidance of preferential or fraudulent transfers or conveyances, or providing for similar remedies. The definition, however, explicitly excepts any claim based on actual intent to hinder, delay or defraud pursuant to such fraudulent transfer or conveyance law.

This section does not limit the right of a depository institution, a controlling stockholder, or a depository institution holding company to seek direct review of an order or directive of a Federal banking agency under the Administrative Procedure Act in accordance with various banking statutes. In addition, the provision does not limit the rights of a claimant to bring suit against the United States for a breach of contract or a taking under the 5th Amendment to the Constitution.

##### *Sec. 731. Interest rates and other charges at interstate branches*

**Senate Position:** No provision.

**House Position:** The House bill at section 198 provides loan pricing parity among interstate banks. Specifically, if an interstate bank can charge a particular interest rate, then a local bank in the State into which the interstate bank has branched, may charge a comparable rate.

**Conference Substitute:** The Senate receded to the House.

##### *Sec. 732. Interstate branches and agencies of foreign banks*

**Senate Position:** The Senate bill at section 313 allows a Federal or State agency of a foreign bank to upgrade to a branch with the approval of the appropriate chartering authority and the Federal Reserve Board.

**House Position:** Same.

**Conference Substitute:** The House receded to the Senate.

##### *Sec. 733. Fair treatment of women by financial advisers*

**Senate Position:** No provision.

**House Position:** The House bill at section 198B establishes the sense of the Congress that estate planners, trust officers, investment advisers, and other financial planners and advisors should eliminate examples in their training materials which portray women as incapable and foolish, and develop

fairer and more balanced presentations that eliminate outmoded and stereotypical examples which lead clients to take actions that are financially detrimental to their wives and daughters.

*Conference Substitute:* The Senate receded to the House with an amendment in the nature of a substitute.

The substitute establishes the sense of the Congress that individuals offering financial advice and products should do so in a non-discriminatory, nongender-specific manner.

*Sec. 734. Membership of loan guarantee boards*

*Senate Position:* No provision.

*House Position:* No provision.

*Conference Substitute:* The Conferees adopted a provision that would modify the membership of the Emergency Steel Loan Guarantee Board and the Emergency Oil and Gas Loan Guarantee Board. Where under existing law the Chairmen of the Federal Reserve Board and SEC were designated as members, the provision permits both to designate another Member of the Board or another Commissioner as appropriate.

*Sec. 735. Repeal of stock loan limit in Federal Reserve Act*

*Senate Position:* No provision.

*House Position:* The House bill at section 124 repeals the restrictions in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authority are not affected.

*Conference Substitute:* The Senate receded to the House.

*Sec. 736. Elimination of SAIF and DIF Special Reserves*

*Senate Position:* The Senate bill at section 301 eliminates the need for the establishment of a SAIF "special reserve" which the FDIC was required to establish beginning in 1999. This revision becomes effective on the date of enactment.

*House Position:* Same other than the effective date.

*Conference Substitute:* The House receded to the Senate.

*Sec. 737. Bank officers and directors as officers and directors of public utilities*

*Senate Position:* The Senate bill at section 309 amends the Federal Power Act to permit officers or directors of public utilities to serve as officers or directors of banks, trust companies, or securities firms, if certain safeguards against conflicts of interest are complied with.

*House Position:* No provision.

*Conference Substitute:* The House receded to the Senate.

*Sec. 738. Approval for purchases of securities*

*Senate Position:* The Senate bill at section 315 authorizes a majority of the entire board of directors of a bank to vote on the purchase of securities from an affiliate, based on a determination that the purchase is a sound investment for the bank. Such a standard does not exist under current law, which simply requires the vote to be taken by a majority of independent directors.

*House Position:* No provision.

*Conference Substitute:* The House receded to the Senate.

*Sec. 739. Optional conversion of Federal savings associations*

*Senate Position:* The Senate bill at section 602 allows a Federal savings association chartered prior to the date of enactment to convert into one or more national banks, subject to the approval of the OCC, each of which may encompass one or more of the branches of the Federal savings association in one or more States.

*House Position:* No provision.

*Conference Substitute:* The House recedes to the Senate with an amendment.

The amendment would allow the conversion to State as well as national banks.

*Sec. 740. Grand jury proceedings*

*Senate Position:* No provision.

*House Position:* No provision.

*Conference Substitute:* The Conferees adopted a provision that would permit U.S. Attorneys offices to seek a court order to provide financial institution regulatory agencies with access to grand jury material, giving State regulatory agencies parity with Federal regulatory agencies.

From the Committee on Banking and Financial Services, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JAMES A. LEACH,  
BILL MCCOLLUM,  
MARGE ROUKEMA,  
DOUG BEREUTER,  
RICK LAZIO,  
SPENCER BACHUS,  
MICHAEL N. CASTLE,  
JOHN J. LAFALCE,  
BRUCE F. VENTO,

As additional conferees from the Committee on Banking and Financial Services, for consideration of titles I, III (except section 304), IV, and VII of the Senate bill, and the title I of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title V of the Senate bill, and title II of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,  
JAMES H. MALONEY,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title II of the Senate bill, and title III of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
CAROL B. MALONEY,  
NYDIA M. VELÁZQUEZ,  
DARLENE HOOLEY,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title VI of the Senate bill, and title IV of the House amendment, and modifications committed to conference:

CAROL B. MALONEY,  
LUIS V. GUTIERREZ,  
KEN BENTSEN,

As additional conferees from the Committee on Banking and Financial Services, for consideration of section 304 of the Senate bill, and title V of the House amendment, and modifications committed to conference:

PAUL E. KANJORSKI,  
GARY L. ACKERMAN,

From the Committee on Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

TOM BLILEY,  
MICHAEL G. OXLEY,  
BILLY TAUZIN,  
PAUL GILLMOR,  
JAMES GREENWOOD,  
CHRIS COX,  
STEVE LARGENT,  
BRIAN BILBRAY,  
E. TOWNS,  
DIANA DEGETTE,  
LOIS CAPPS,

Provided that Mr. Rush is appointed in lieu of Mrs. Capps for consideration of section 316 of the Senate bill:

BOBBY L. RUSH,

From the Committee on Agriculture, for consideration of title V of the House amend-

ment, and modifications committed to conference:

LARRY COMBEST,  
THOMAS W. EWING,  
CHARLES W. STENHOLM,

From the Committee on the Judiciary, for consideration of sections 104(a), 104(d)(3), and 104(f)(2) of the Senate bill, and sections 104(a)(3), 104(d)(3)(A), 104(b)(4)(B), 136(b), 136(d)-(e), 141-44, 197, 301, 306 of the House amendment, and modifications committed to conference:

HENRY HYDE,  
GEORGE W. GEKAS,

From the Committee on Banking and Financial Services, for consideration of section 101 of the Senate bill and section 101 of the House amendment: Mr. King is appointed in lieu of Mr. Bachus; Mr. Royce is appointed in lieu of Mr. Castle

PETER T. KING,  
ED ROYCE,

From the Committee on Commerce, for consideration of section 101 of the Senate bill and section 101 of the House amendment: Mrs. Wilson is appointed in lieu of Mr. Largent; Mr. Fossella is appointed in lieu of Mr. Bilbray

HEATHER WILSON,  
VITO FOSSELLA,

*Managers on the Part of the House.*

PHIL GRAMM,  
CONNIE MACK,  
ROBERT F. BENNETT,  
ROD GRAMS,  
WAYNE ALLARD,  
MICHAEL B. ENZI,  
CHUCK HAGEL,  
RICK SANTORUM,  
JIM BUNNING,  
MIKE CRAPO,  
PAUL SARBANES,  
CHRISTOPHER J. DODD,  
JOHN F. KERRY,  
TIM JOHNSON,  
JACK REED,  
CHARLES SCHUMER,  
EVAN BAYH,  
JOHN EDWARDS,

*Managers on the Part of the Senate.*

# NOTIFICATION OF INTENT TO OFFER RESOLUTION RAISING QUESTION OF PRIVILEGES OF THE HOUSE

Mr. WISE. Mr. Speaker, pursuant to clause 2(a)(1) of House rule IX, I rise to give notice of my intent to offer a question of privileges of the House expressing the sense that its rights and integrity have been impugned.

The form of the resolution is as follows:

Calling on the President to abstain from re-negotiating international agreements governing antidumping and countervailing measures.

Whereas under Art. I, Section 8 of the Constitution, the Congress has power and responsibility with regard to foreign commerce and the conduct of international trade negotiations;

Whereas the House of Representatives is deeply concerned that, in connection with the World Trade Organization ("WTO") Ministerial meeting to be held in Seattle, Washington, and the multilateral trade negotiations expected to follow, a few countries are seeking to circumvent the agreed list of negotiation topics and reopen debate over the WTO's antidumping and antisubsidy rules;

Whereas the Congress has not approved new negotiations on antidumping or